147 U.S. 59

RECORD, CASE No. 13,621.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~887~~. 79

JOHN T. LYTLE, APPELLANT,

vs.

THE TOWN OF LANSING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED AUGUST 30, 1889.

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1 *Statement.*

United States Circuit Court, Northern District of New York.

THE TOWN OF LANSING
vs.
JOHN T. LYTLE. } In Equity. No. 5689.

JOHN T. LYTLE
vs.
THE TOWN OF LANSING. } Cross-Bill.

On the 16th day of January, 1888, the defendant, John T. Lytle, removed this cause from and out of the supreme court of the State of New York, Tompkins county, and into this court, and on that day filed in this court the record of said supreme court on removal; which record is hereto annexed.

On the 21st day of January, 1888, defendant filed his answer, by Shearman & Sterling, his solicitors, which answer is hereto annexed.

On the 20th day of March, 1888, the complainant, by Howland & Wheeler, its solicitors, filed its replication to the said answer; which replication is hereto annexed.

On the 9th day of April, 1888, the said John T. Lytle filed a cross-bill, which is hereunto annexed, against the said The Town of Lansing, and a subpœna to appear and answer was thereupon duly issued.

2 On the 13th day of April, 1888, The Town of Lansing entered its appearance as to said cross-bill, by Howland & Wheeler, its solicitors, and on the 28th day of April, 1888, filed its answer to said cross-bill; which answer is hereto annexed.

On the 7th day of May, 1888, the said John T. Lytle filed his replication to the answer to said cross-bill; which replication is hereto annexed.

Testimony was thereafter taken on behalf of the respective parties, and on the 27th of November, 1888, the said cause was brought to a hearing and argued by counsel, upon pleadings and proofs, before the Honorable William J. Wallace, circuit judge, at a term of this court held at Syracuse.

A decision was duly made by said court in favor of The Town of Lansing and filed herein on the 19th day of March, 1889.

Thereafter and on the 25th day of April, 1889, the costs of the said The Town of Lansing were duly taxed and adjusted by the clerk of this court at $573.25.

On the 25th day of April, 1889, at a term of this court held at Syracuse—present, the Honorable William J. Wallace, circuit judge—a final decree was made and entered in this cause; which final decree is hereunto annexed.

3 United States Circuit Court, Northern District of New York.

Summons.

Supreme Court, County of Tompkins.

THE TOWN OF LANSING, Plaintiff,
vs.
JOHN T. LYTLE, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated this 13th day of May, 1887.

HOWLAND & WHEELER,
Plaintiff's Attorneys,
131 *Genesee St., Auburn, Cayuga Co., N. Y.*

4 *Complaint.*

Supreme Court, Tompkins County.

THE TOWN OF LANSING, Plaintiff,
vs.
JOHN T. LYTLE, Defendant.

The plaintiff complains against the defendant in this action and alleges that it is a municipal corporation, created and existing under the laws of the State of New York, and is located in and is one of the towns in the county of Tompkins, in the State of New York, having power to sue in this court in the matter herein alleged; and that heretofore, on or about the 19th day of September, 1871, one Darius Hall and John T. Knettles and Alonzo H. Clark assumed to act as commissioners in and for said town of Lansing under and by the authority of a judgment made and rendered by the county judge of said Tompkins county on or about the 21st day of March, 1871, in certain proceedings taken and had before him on the petition of certain tax-payers of said town of Lansing, under an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed on or about April 2, 1850, to permit municipal corporations to aid in the construction of railroads, passed May 18th, 1869, enacting that a majority of the tax-payers of any town or municipal corporation owning or representing a majority of the taxable property of such town or corporation might present their petition to the county judge of the county in which such town is located, setting forth the facts as provided by said act and expressing the desire to aid in the construction of

such railroad named in said petition, and, notice having been published — the hearing of proofs in relation to the matters in said petition and proofs having been taken before said county judge at the time and place named in said notice, the said
5 county judge did thereupon judge and determine that such petitioners constituted a majority representing the majority of the taxable property of said town and tax-payers of said town, and did also adjudge and determine to appoint and did appoint and commission three freeholders of such town to be commissioners for the purpose of subscribing for the stock of the Cayuga Lake Railroad Company, a railroad or corporation incorporated under the laws of the State of New York, and of issuing the bonds of the town of Lansing in payment therefor, and to discharge such other duties as were provided in said act and the acts of the legislature amendatory thereof; the bonds thus issued not to exceed 20 per cent. of the assessed valuation of the taxable property in said town of Lansing as shown by the last preceding assessment-roll of said town, and also adjudging that said bonds were to be issued by said commissioners, duly sealed with their seal and signed by them, payable at the expiration of 30 years from their date, with interest at 7 per cent. per annum, payable semi-annually, not to exceed in the aggregate the amount set forth in said petition, said bonds to bear interest coupons corresponding in number and amounts with the several payments of interest to become due thereon. The said judgment authorized said commissioners to subscribe in the name of said town for the stock of the said railroad corporation so named to an amount equal to the amount of the bonds so created by them, and to transfer said town bonds to said railroad corporation at par for said stocks, and also adjudged that said bonds so issued by said commissioners should be a charge upon the real and personal property within the limits of said municipal corporation, as well as also to be a lien on the property of said town; the principal and interest, when due, to be collected and paid in like manner as other debts, obligations, and charges against the said municipal corporation.

That the petition in such proceedings was presented to the
6 said county judge on or about the 10th day of December, 1870, and expressed also the desire of the petitioners that said town of Lansing should create and issue its bonds to the amount of $75,000 and to invest the same or the proceeds thereof in the stock of the Cayuga Lake Railroad Company, which company at that time was a railroad corporation formed and acting under the general railroad acts of the State of New York and projecting its railroads through the said town of Lansing, in which petition it was claimed that said petitioners were a majority of the taxable inhabitants of said town and representing the required majority of the taxable property of said town, according to the requirements of said act; and that said county judge did also adjudge, in accordance with said petition, that said commissioners issue the bonds of said town to the amount of $75,000 and invest the same in the stocks of the said railroad company as aforesaid; and that said commissioners, under the authority of said judgment and none other, did issue

bonds of the said town to the amount of $75,000 on or about the 19th of September, 1871, signed by them, to the said Cayuga Lake Railroad Company and took the stock of the said company for that amount; that said bonds were 75 in number and each in the amount of $1,000 principal, numbering from one to seventy-five, inclusive, payable in 30 years from the date, and bearing interest, payable semi-annually on the first day of January and July of each year. The coupons were interest warrants attached to each bond, and that said bonds were all in the same words and figures and said interest warrants were all in the same words and figures except as to the maturity thereof, and except that some of the said coupons were signed by one of the said commissioners and some by the other commissioners in the usual form, representing severally each semi-annual obligation of interest to accrue by the terms of said bonds as such interest should thereafter become due and payable; a copy of one of which coupons is as follows:

7 "$35. The town of Lansing, county of Tompkins, will pay the bearer hereof, at the Fourth National Bank of New York, in the city of New York, on the first day of July, 1884, the sum of $35 for six months' interest then due on bond No. —.

(Signed) DARIUS HALL,
Commissioner."

That said bonds are each respectively made payable at the bank aforesaid; that said bonds were none of them sealed by said commissioners or either of them nor by their authority or either of them, and the same were not sealed and contained no seals at the time they were sold and delivered to the said railroad company; and plaintiff alleges upon information and belief that the said John T. Lytle, defendant, now has in his possession, custody, and control each and every of the above-described 75 bonds of $1,000 each, including said coupons thereto attached, payable on and subsequent to the first day of July, 1884.

The plaintiff alleges that the said commissioners, Darius Hall and John T. Knettles and Alonzo H. Clark, as such commissioners aforesaid, had no authority in virtue of the aforesaid judgment or otherwise to make, execute, or deliver said bonds or coupons nor to sell and transfer the same as aforesaid; that the said county judge, in virtue of the said proceedings before him, had no right, power, or jurisdiction whatever to entertain said proceedings before him, nor to hear proof, nor to make any determination or judgment whatever therein, nor to adjudge any of the matters therein adjudicated, nor to appoint said commissioners, Hall, Clark, *or* Knettles; that the whole of said proceedings before said county judge and by said commissioners were wholly null and void, including the judgment above referred to; that immediately upon the entering and docketing of said judgment and before the issuing of any of the bonds above men-
8 tioned and on or about the 22nd day of March, 1871, upon the application and on the relation of Roswell Beardsley and others, resident freeholders, citizens, and tax-payers of the said town of Lansing, who had appeared in the said proceedings before said

county judge and contested the said proceedings, a writ of certiorari in due form of law was issued and duly allowed by and out of the supreme court of the State of New York, duly directed to Mills Van Valkenburgh, county judge of said county, before whom said proceedings and said judgment were made and entered, for the review and determination by the said supreme court touching the validity or invalidity of the above-mentioned proceedings and decision and judgment before him, the said county judge. Said writ was thereupon duly served upon said county judge, whose return in obedience thereto was duly made on or about September 1st, 1871, and duly filed in the office of the clerk of said supreme court in Tompkins county on or about the 8th day of January, 1872, whereby said proceedings and judgment before the county judge were duly removed into and before the said supreme court and the justices thereof for their review and determination in the 6th judicial district in the State of New York, according to the rules and practice of said court; that thereupon, in the said supreme court, before said justices, and at a general term thereof, held at the city of Albany, in said State, on the first Tuesday in March, 1872, the parties, said relator and respondent, duly appeared before said court and duly presented, argued, and submitted to the said court what they severally had to present touching the matters involved and presented in and by the said return and in reference to the validity or invalidity of the said proceedings and judgment before the said county judge; and that afterwards, at a general term of the said supreme court, held at the city of Elmira, State of New York, on the first Tuesday of May, 1872, the said court, having duly considered the matter so presented, argued, and submitted as
9 aforesaid, did then and there duly determine, order, and adjudge, among other things, that the said proceedings and judgment before said county judge were wholly unauthorized and void, and that the same be, and in and by the said order and judgment of the said supreme court then and there duly made and entered the same were, in all things reversed; that pursuant to such order and determination of the supreme court and on the 27th day of May, 1878, judgment in and by the said supreme court was duly perfected and the judgment thereof duly filed and said judgment duly docketed and entered in the office of the clerk of said court, in Tompkins county, whereby said proceedings and judgment before said county judge mentioned and set forth above were and are in all things reversed, annulled, set aside, and held for nought, as appears by the said judgment and the record thereof remaining unimpaired and unreversed in the clerk's office aforesaid; of the issuing of which writ of certiorari and the proceedings thereon aforesaid the said alleged commissioners and the said alleged railroad company and the officers thereof had notice *d* before said pretended making and issuing of the said bonds and coupons and the disposition thereof to the said railroad company mentioned and set forth as above; that the said stocks of the said railroad company received by said commissioners for said town in exchange for said bonds and coupons were at the same time and ever have been and still are

utterly valueless and the plaintiff has received no benefit of the avails therefrom; that said railroad company has ceased to do business as a company and were and are utterly insolvent, and that the plaintiff is ready to deliver up said stocks and hereby offers and tenders said stocks absolutely to said railroad company, or to any person to whom this court may direct, absolutely and without condition; that said railroad company, by its officers, wrongfully and fraudulently and by false pretences to said commissioners induced and procured said commissioners to issue and deliver to them
10 said bonds, and by representing to said commissioners and inducing them to believe that the issuing and delivering of said bonds, though wholly without authority to do so, would not in any way injure or effect their town, and also by presenting to said commissioners a written agreement and undertaking of the railroad company or its officers to indemnify and save said alleged commissioners harmless from the consequences of their said unlawful and wrongful act in issuing and delivering to them said bonds and coupons of said town.

And plaintiff further alleges that the petition before mentioned, presented to the said county judge, and upon which said proceedings and judgment were based did not embrace nor purport to embrace a majority of the tax-payers, representing a majority of the taxable property of the said town of Lansing, appearing on the then last preceding tax-list or assessment thereof; that said petition, at the time when so presented to the said county judge, did not embrace or purport to embrace and was not so presented, nor did the same purport to be presented to the county judge by a majority of the tax-payers of said town whose names appeared on the tax-list or assessment aforesaid as representing a majority of the taxable property of said town; that no verification or proof that said petition did embrace such majority of tax-payers was made in such proceedings before said county judge, and when the said judgment and decision thereon were by him made and entered said railroad company was not a duly organized railroad company or corporation and had no valid legal existence, and said county judge acquired no authority or jurisdiction to render said judgment or appoint said commissioners.

That the act which authorizes the formation of railroad corporations and under which their articles profess to have been filed and the corporation organized required that they should state the name of each county in this State through or into which it is made or intended to be made. This requirement was omitted in said
11 articles of association, and the termini of said railroad were not stated in said articles of association, and the petition before said county judge did not direct whether it was in stock or in bonds that the money to be raised should be invested; that said petition stated the same should be invested or the proceeds thereof in stock or bonds; that it did not state whether said money to be raised or said bonds created should be invested in either stock or bonds and was directly defective in that respect.

And plaintiff alleges that said bonds on which said coupons were

attached, each and every of them, were issued without being executed as the statute requires, having no seals thereto as required by law, and that each was made to run more than 30 years after their dates before maturity, all becoming due at the same time, in violation of the provisions of said act and of the laws of the State of New York; that said bonds, therefore, were not executed as required by law and were for that reason illegal and void; that if said bonds or coupons contain any seals thereon at this time such seals have been placed upon said bonds by some person unauthorized to seal them, and by reason of which said bonds have been materially altered in that respect, and for that reason are null and void; and plaintiff further alleges that about the 19th day of August, 1876, one John J. Stewart, a non-resident of the State of New York, brought an action in the circuit court of the United States against said town of Lansing, alleging in his complaint that he was the owner of said 75 bonds of the town of Lansing and the coupons thereon, and claiming to recover the interest on said coupons due up to July 1st, 1876, and for three and a half years prior to July 1st, 1876; that said town of Lansing filed an answer to said action, and that on the 19th day of December, 1878, said action was tried on the merits before the circuit court of the United States for the northern district of New York and the said bonds and coupons were adjudged to be illegal and void by said court and his complaint dis-
12 missed and judgment ordered for the town of Lansing, which said judgment was duly entered in the office of the clerk of said court and remains unreversed, except that thereafter the said Stewart duly sued out a writ of error to review said judgment in the United States Supreme Court, and said cause and judgment aforesaid were thus removed on such writ of error to said United States Supreme Court, and thereafter came on to be heard in said court and was heard in said court and argued by counsel for the respective parties, and thereafter was in all things affirmed by said United States Supreme Court and judgment of affirmance duly entered thereon; that about the year 1882 said Stewart transferred said bonds and coupons to one George Breckenridge, of San Antonio, Texas, and that said Breckenridge thereafter and about the month of October, 1884, commenced an action in the United States circuit court for the northern district of New York against the said town of Lansing, claiming to be the owner of said 75 one-thousand-dollar bonds of said town of Lansing, and the coupons upon each and all of them falling due on the first day of July, 1882, and first day of January, 1883, and the first day of July, 1883, and on the first day of January, 1884, and claiming to recover said sums of interest on said coupons in said action; that the town of Lansing appeared and filed its answer to his complaint, and that afterwards and in the month of November, 1885, said action came on for trial and was tried before said circuit court, Honorable William J. Wallace, circuit judge, presiding, and a jury; that said cause was tried upon its merits and the jury returned a verdict to the court upon said trial, whereby they found for the defendant therein, and that the same is unreversed; that afterwards—that is, after about February, 1884—as plaintiff is

informed and believes, the said Breckenridge sold to John T. Lytle, the defendant in this action, said 75 one-thousand-dollar bonds
of the town of Lansing and the coupons payable on the first
13 of July, 1884, and all subsequent coupons thereon attached
then to become due, and that on or about the month of February, 1885, the said Lytle commenced an action in the United States circuit court for the northern district of New York against the town of Lansing, to recover the interest on the coupons attached to said bonds, falling due on the first of July, 1884, and on the first day of January, 1885, being 150 coupons of the amount of $35 each, claiming five thousand two hundred and fifty dollars judgment, with interest on said coupons; that the defendant, The Town of Lansing, has appeared and served an answer to the complaint in said action, setting forth various legal defenses thereto; that said action has not been brought to trial, but is still pending in said court; that said Lytle is a resident of the State of Texas and is in the business of a stockman, and is engaged on a ranch called the Trio ranch, in the State of Texas; and the plaintiff alleges that the said Stewart and the said Cayuga Lake Railroad Company and the said Breckenridge and the said Lytle, the defendant in this action, have each and every of them, as plaintiff is informed and believes, purchased and become in possession of said bonds and coupons without valid consideration and in bad faith and in fraud of the plaintiff's rights, that they have each and every of them, as plaintiff is informed and believes, taken the same with full notice and knowledge of the defects in the proceedings to issue said bonds aforesaid, which render them null and void, and of the proceedings in the supreme court upon which they were declared null and void; that the pretended sale and transfer of said bonds to the several parties before named have been made for the sole purpose of enabling the several pretended owners thereof to prosecute against the said town of Lansing a multiplicity of actions upon said bonds and coupons by alleged non-residents of the State of New York in the Federal courts of the United States and elsewhere, well knowing that said
bonds were invalid and void, for the purpose of annoying and
14 vexing and putting the said town to great expense and trouble,
and by thus compelling them, for the sake of peace, to pay to such pretended owners some portion of said bonds and coupons, and, as plaintiff is informed and believes and has good ground to believe from the transactions in the past, that it is the purpose of the owner, and particularly of the present owner, the defendant, to continue the transfer and sale of said bonds and coupons to other parties for the purpose of bringing other suits thereon; that since the commencement of the said action by the defendant and within six months past, with the knowledge and by the authority of the defendant, as plaintiff is informed and believes, the defendant and his authorized agents have urgently endeavored to have the plaintiff pay to him, the said defendant, a small percentage of the par value of the said bonds and coupons, to wit, much less than fifty per cent. of the par value thereof, which was rejected by said plaintiff; and, as plaintiff is informed and believes, the said bonds and

coupons have in every instance been so sold and transferred to non-residents of the State of New York for the sole purpose of bringing actions thereon in United States courts and not as *bona fide* holders of said bonds, in violation of the laws and practice of the said courts; and the plaintiff verily believes from the facts before stated that it will be continually subjected to lawsuits and prosecutions by different pretended owners of said bonds, continually and indefinitely, unless the relief prayed for herein be granted them.

The plaintiff alleges on information and belief that said bonds and coupons are all within the State of New York and the jurisdiction of this court at this time, and that the defendant himself is intending to be and is at present sojourning and being personally at this time within the State of New York under the jurisdiction of this court, and that he has the personal custody, possession, and control of each and every of the said bonds and coupons before
15 mentioned and is threatening by words and acts and all the artifice and fraudulent plans and acts that he is capable of devising and putting into execution to collect or enforce the collection or in some manner procure the payment of said bonds by unjust, fraudulent acts and schemes on his part.

Wherefore the plaintiff prays that a judgment and decree of this court be made declaring said bonds and coupons null and void in the hands of this defendant or any other person, and that the defendant be compelled by the judgment and order of this court to deliver up and produce each and every of said seventy-five one-thousand-dollar bonds of said town of Lansing and the coupons thereto attached, claimed to be owned by him as aforesaid, purporting to have been made, executed, and delivered in aid of the Cayuga Lake Railroad Company, to the clerk of this court or to such other person as the court may designate, to be each and every one of them cancelled and destroyed; and that the defendant, his attorneys, agents, and employees, be restrained and enjoined from selling, transferring, or in any manner disposing of said bonds and coupons or any part of them during the pendency of this action to any person or persons whomsoever; and that said defendant, his attorneys, agents, employees, be enjoined and restrained from collecting by any legal proceeding, taxation, or otherwise any sum whatever from the plaintiff upon said bonds or coupons during the pendency of this action; and that a final judgment and decree in this action may be entered in this court forever enjoining and restraining the defendant, his personal representatives, heirs, assigns, agents, attorneys, and counselors and employees, from selling, transferring, or disposing of said bonds or coupons, and in any manner whatever, except as by the judgment or permission of this court, or in any manner enforcing the collection of the same either by legal proceeding or by taxation, and for such other, further, or different judgment or relief which to
16 the court may seem meet and proper, and for the costs of this action.

HOWLAND & WHEELER,
Plaintiff's Attorneys,
131 *Genesee St., Auburn, Cayuga Co., N. Y.*

Dated May 12, 1887.

Affidavit of Horatio Brown.

STATE OF NEW YORK, } ss:
Cayuga County, }

Horatio Brown, being first duly sworn, deposes and says he is a resident of the town of Lansing, county of Tompkins, in the State of New York, and that he is the supervisor of said town of Lansing and is personally acquainted with and knowing to the facts set forth in the above complaint, and that he has heard read said complaint and knows the contents thereof, and that the same is true of his own knowledge except those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

HORATIO BROWN.

Subscribed and sworn to before me this 13th day of May, 1887.

AMASA J. PARKER,
Special County Judge of Cayuga County.

17 (EX. F.)

Petition to Remove Cause.

Supreme Court of the State of New York.

THE TOWN OF LANSING *against* JOHN T. LYTLE. } Petition for Leave to Remove.

To the supreme court of the State of New York:

The petition of the defendant, John T. Lytle, respectfully shows:

I. That an action has been brought in this court, in and for the county of Tompkins, against your petitioner, who is the sole defendant, by the plaintiff above named, which is the sole plaintiff, to declare null and void and to have delivered up and canceled certain bonds of the amount of $75,000, besides interest, issued by the plaintiff and now in the possession of the defendant.

II. That the matter in dispute in this action exceeds the sum of $2,000, exclusive of costs, as appears by the complaint herein.

III. That your petitioner is and at the time of the commencement of this action was a citizen and resident of the State of Texas, and desires to remove this suit from this court to the circuit court of the United States for the northern district of New York, of which district the said county of Tompkins is a part; and that the plaintiff is and at the time of the commencement of this action was a citizen of the State of New York.

IV. That the time when your petitioner is required by the
18 law of this State and by the rule of this court to answer the complaint of the plaintiff will expire on the thirtieth day of December, 1887, and not before; that your petitioner submits a copy of his proposed answer herewith, and intends to defend this action in good faith.

V. That your petitioner makes and files herewith a bond, with good and sufficient surety, for his entering in such circuit court on the first day of its next session a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner therefore asks that this court do accept the said surety and bond offered by your petitioner as aforesaid and do proceed no further in the said cause, except to make the usual order of removal, and to cause the record herein to be removed into said circuit court of the United States in and for the northern district of New York.

And for such further or other order or relief in the premises as may be just.

New York, December 29, 1887.

JOHN T. LYTLE,
By SHEARMAN & STERLING,
Attorneys-in-Fact.

CITY AND COUNTY OF NEW YORK:

John A. Garver, being duly sworn, says:

1. I am one of the attorneys for the defendant herein.

2. The foregoing petition is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

3. The reason this verification is not made by the defend-
19 ant is that he is not within the county of New York, where I reside, but is at present, as I believe, in the State of Texas, where he resides.

JOHN A. GARVER.

Sworn to before me December 29th, 1887.

CHAS. F. HALSTED,
Notary Public, Kings Co.

Cert. in N. Y. Co.

Bond on Removal.

Know all men by these presents that we, John T. Lytle, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto the town of Lansing in the penal sum of five hundred dollars ($500), lawful money of the United States of America, to be paid to the said obligee; to which payment, well and truly to be made, the said John T. Lytle binds himself, his heirs, executors, administrators, and assigns, and said American Surety Company binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of December, 1887.

Whereas an action has been commenced in the New York supreme court for Tompkins county, in which the said obligee is plaintiff and the said John T. Lytle is defendant;

Whereas the said John T. Lytle, defendant aforesaid, is desirous of removing said action to the circuit court of the United States for the northern district of New York, in the second circuit, and has filed his petition therefor under and in accordance with the provisions of the act of Congress of March 3d, 1887:

Now, the condition of this obligation is such that if the said John T. Lytle shall enter or cause to be entered in the said circuit court of the United States on the first day of its next session a copy of the record of the aforesaid action and shall pay all costs that may be awarded against him by the said circuit court if the said court shall hold that the said action was wrongfully or improperly removed thereto, then this obligation to be void and of none effect; otherwise to be and remain in full force and virtue.

JOHN T. LYTLE, [L. S.]
By SHEARMAN & STERLING, *Attorneys-in-Fact.*
AMERICAN SURETY COMPANY OF NEW YORK,
By HENRY D. LYMAN, *Vice-President.*
FRED. F. NUGENT, *Secretary.*

Signed, sealed, and delivered in the presence of—
[SEAL.] CHAS. F. HALSTED.

CITY AND COUNTY OF NEW YORK, *ss:*

On this 28th day of December, 1887, before me personally came Shearman & Sterling, to me known and known to me to be the persons described in and who, as such attorneys, executed the foregoing instrument, and acknowledged that they executed the same as the act and deed of John T. Lytle therein described and for the purposes therein mentioned by virtue of a power of attorney duly executed by the said John T. Lytle to them and bearing date the 24th day of December, 1887.

[SEAL.] CHAS. F. HALSTED,
Notary Public, Kings Co.

Cert. in N. Y. Co.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 29 day of December, 1887, before me personally appeared Henry D. Lyman, vice-president of the American Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 486, of the Session Laws of 1881; and the said Henry D. Lyman further said that he was acquainted with

Fred. F. Nugent and knew him to be the secretary of said company; that the signature of the said Fred. F. Nugent, subscribed to the said instrument, is in the genuine handwriting of the said Fred. F. Nugent, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Henry D. Lyman, vice-president.

[SEAL.] C. W. HERMAN,
Notary Public for Kings Co.

Certificate filed in New York county.

At a meeting of the board of directors of the American Surety Company held at the office of the company on the 9th day of June, 1886, on motion, it was—

"Resolved, That in pursuance of chapter 416, Laws of 1886, amending section eight hundred and eleven of the Code of Civil Procedure, the president or vice-president be, and either of them is, hereby authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for or on behalf of the company and to attach thereto the seal of the company, the same to be attested by the secretary or assistant secretary."

CITY AND COUNTY OF NEW YORK, *ss:*

I, Frederick F. Nugent, secretary of the American Surety Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

[SEAL.] Given under my hand and the seal of the company, at the city of New York, this 29th day of December, 1887.

FRED. F. NUGENT, *Secretary.*

22 *Order on Removal.*

In the Circuit Court of the United States for the Northern District of New York.

UTICA, *January* 16, 1888.

Present: Hon. W. J. Wallace, judge.

THE TOWN OF LANSING
vs. } 5689.
JOHN T. LYTLE.

On reading and filing certified copies of the papers of record in the supreme court of the State of New York, Tompkins county, in the above-entitled cause, together with copies of the petition & bond for removal of this cause from and out of said supreme court into this court—

Now, on motion of Shearman & Sterling, it is—

Ordered that the above-entitled cause be, and the same is hereby, entered in this court; that the appearance of the defendant herein,

by the said Shearman & Sterling, his solicitors, be, and the same is hereby, entered in this court, and that this cause proceed in this court in the same manner as if brought in this court by original process against said defendant.

23 *Answer.*

Supreme Court.

THE TOWN OF LANSING
against
JOHN T. LYTLE.

The defendant answers to the complaint, upon information and belief, as follows:

First. For a first defense.

I. This defendant denies that none of the bonds mentioned in the complaint were sealed by the commissioners therein mentioned or either of them or by their authority or either of them, or that the same were not sealed or contained no seals at the time that they were sold and delivered to the railroad company therein mentioned.

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II. This defendant denies that the commissioners mentioned in the complaint had no authority to make, execute, or deliver said bonds or coupons or to sell and transfer the same; and he denies that the said county judge had no right, power, or jurisdiction to entertain said proceedings nor to hear proof nor to make any determination thereon nor to adjudge any of the matters therein adjudicated nor to appoint said commissioners; and he denies that the whole or any part of said proceedings before said county judge or by said commissioners, including said judgment, were null or void.

III. This defendant has no knowledge nor information sufficient to form a belief as to the truth of any allegation in the said complaint respecting an application for a writ of certiorari or as to the issuing or service of said writ or any of the proceedings taken thereon, or as to the judgment, order, or determination of the supreme court alleged in said complaint, or the filing, entry, or docketing thereof, or as to the said commissioners or the said railroad company or the officers thereof having notice of such writ of a certiorari or the proceedings thereon before the said bonds and coupons were made, issued, and delivered *in* said railroad company.

IV. He denies that the stocks of the said railroad company received by the said commissioners for said town in exchange for said bonds and coupons were at that time or have ever since been or now are utterly valueless, or that the plaintiff had received no benefit of the avails therefrom, and that said company has ceased to do business as a company, or that it was and is utterly insolvent, or that the plaintiff is ready to deliver up such stocks to any person whatever; and he denies each and every allegation of the complaint

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respecting the manner in which said railroad company induced or produced said commissioners to issue and deliver said bonds.

V. He denies each and every allegation of the complaint respecting the alleged defects in the proceedings before the said county judge or as to the alleged defects in the organization of said railroad company, and he denies that said railroad company was not a duly organized railroad company, or that it had no valid legal existence, or that said county judge acquired no authority or jurisdiction to render such judgment or appoint such commissioners.

VI. This defendant denies that the seals were not affixed to said bonds at the time the same were issued or not so affixed when such bonds were delivered to the railroad company, or that they were not affixed by the commissioners, or that such bonds were not executed as required by law, or that each was made to run more than thirty years before maturity, or that they were for that or any other reason illegal or void, or that said bonds have been materially altered in any respect since they were issued.

VII. He denies that the proceedings in the suit brought by one George J. Stewart, and also in another suit brought by George W. Breckenridge, upon certain of the coupons originally attached to said bonds, are fully or correctly alleged in the complaint, and he refers for greater certainty to the original records in the said suits or to an exemplified copy thereof to be produced upon the trial; and he avers that in another suit brought in the circuit court of the United States for the northern district of New York by John J. Stewart against the plaintiff herein, upon certain of the coupons originally attached to said bonds, said Stewart recovered judgment against the plaintiff in this suit for the amount of such coupons, with interest; which judgment was paid by the plaintiff in this suit.

26 VIII. He denies each and every allegation of the complaint respecting the manner in which the said John J. Stewart, the said George W. Brackenridge, and this defendant purchased or came in possession of said bonds and coupons or any of them or as to the purpose for which any of the sales and transfers alleged in the complaint were made; and he avers that he became the purchaser of said bonds and coupons in good faith and for a full and valuable consideration and not for the purpose of bringing an action thereon in the United States courts, and that he thereby became and has ever since continued to be a *bona fide* holder of said bonds for a valuable consideration; and he denies that it is the purpose of the owner of said bonds or of this defendant to continue the transfer and sale of said bonds or coupons to other parties for any purpose, or that the plaintiff rejected an offer of compromise made by this defendant; and he avers that the plaintiff's former attorneys and defendant did agree upon a basis of compromise of this defendant's claim, which agreement the plaintiff subsequently repudiated; and he denies that the plaintiff will be continually subjected to lawsuits or prosecutions by owners of said bonds.

IX. This defendant denies that he is or was threatening by artifice or fraudulent plan or act of any kind to collect or enforce the collection or payment of said bonds or any of them by any unjust or fraudulent act or scheme.

Second. For a second defense.

I. This defendant denies that at the time when the bonds alleged in the complaint were issued and at the time that the stock of the railroad company, mentioned in the complaint, was delivered to the plaintiff the railroad of the said railroad company through the town of Lansing, in the State of New York, was not built or constructed and the said railroad company borrowed upon the pledge of the said bonds in October, 1871, $50,000, which, together
27 with other moneys of said company, was used in the construction of its railroad through the said town of Lansing; that the said railroad is still in said town and is being operated therein and has been and is of great pecuniary advantage and benefit to the said town and the said company was solicited and induced to build said railroad in said town by the promise and agreement of the plaintiff to issue said bonds and deliver them to said company and said railroad would not have been built through said town had it not been for the issuing of said bonds.

II. That the said town has never offered to restore said railroad company to the position in which it was at the time the said bonds were issued, or to refund to said railroad company or its successors the money which was expended by it in the building of its said railroad through said town, or any part thereof, which said money amounted to more than $75,000, and which would not have been expended by said railroad company had it not been for the issuing of said bonds and the delivery of the same to said company.

Third. For a third defense.

I. This defendant avers that the bonds mentioned in the complaint were signed by public officers of the plaintiff, to wit, by the commissioners mentioned in the complaint, who were duly authorized thereto and duly appointed such commissioners by a judgment of the county judge of Tompkins county, in the State of New York, in the matter of the petition of James A. Burr and others, tax-payers of said town, on the second day of March, A. D. 1871; and the said commissioners, while the said judgment was still in full force, issued and delivered the said bonds to the Cayuga Lake Railroad Company, and certified in and by the said bonds that The Town of Lansing, the plaintiff, was authorized to subscribe to the stock of the Cayuga Lake Railroad Company and to issue town bonds in payment therefor
28 to the amount of $75,000; and they thereupon, upon the faith and credit and in behalf of said town, for value received, promised to pay to the bearer of each of said seventy-five bonds the sum of $1,000 on the first day of January, in the year 1902, with interest at seven per cent. per annum from the first day of January, 1872.

II. That this defendant bought the said bonds and paid a valuable consideration therefor, to wit, a one-third interest in a certain ranch in the State of Texas, which one-third interest was worth at least the sum of $50,000, in reliance upon the certificates of the said

officers and without any notice of any kind that there was any defense whatever to the said bonds or any of them.

SHEARMAN & STERLING,
Defendant's Attorneys.

STATE OF TEXAS, }
County of Medina. }

John T. Lytle, being duly sworn, says that he is the defendant named in the foregoing answer; that the said answer is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

JNO. T. LYTLE.

Sworn to before me January 6th, 1888.

ED. DE MONTEL,
Notary Public, Medina Co., Texas.

THE STATE OF TEXAS, }
County of Medina. }

I, August Kempf, clerk of the county court of said county (which is a court of record), do hereby certify that Ed. de Montel, Esq., whose name is subscribed to the annexed instrument of writing, was at the date of the same and is now a notary public in and for said county, duly commissioned and qualified and authorized by law to administer oaths and take acknowledgements of instruments, and full faith and credit are due to all his official acts as such.

29 And I do further certify that the signature attached to the annexed instrument is his proper signature and is genuine.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of the said county court, at my office, in Castroville, this 6th day of January, A. D. 1888.

AUGUST KEMPF,
Clerk County Court, Medina County, Texas.

Replication.

U. S. Circuit Court, N. District of New York, Second Circuit.

TOWN OF LANSING }
vs. } In Equity.
JOHN T. LYTLE. }

Replication of The Town of Lansing, plaintiff, to the answer of John T. Lytle, defendant.

This plaintiff and repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said plea or answer of the defendant herein, for replication thereunto says:

First. For a first reply.

I. That it will aver, maintain, and prove its complaint and decla-

ration in this action to be true, certain, sufficient in law, and that the said answer of John T. Lytle, defendant, is untrue, uncertain, and insufficient to be replied unto by this repliant; that any other matter or thing whatsoever in said plea or answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, avoided,
30 traversed, or denied, is true; all which matters and things this repliant is and will be ever ready to aver, maintain, and prove to this honorable court as this honorable court shall direct.

II. And the plaintiff, repliant herein, upon its information and belief alleges that each and every of the allegations and matters stated and set forth in the answer of the defendant herein as "First, for a first defence," set forth in paragraphs Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9, in said answer, are untrue, and said plaintiff, repliant, denies the same and each and every part of the same, and hereby alleges and asserts that each and every of the allegations pertaining thereto in its declaration in this action are true as therein stated, except—

Second. For a second replication.

This plaintiff specifically admits the following specific facts alleged in portions of said answer above referred to, viz:

I. It admits the truth of the following allegations contained in subdivision 7 of said defendant's answer, viz: "And he avers that in another suit brought in the circuit court of the United States for the northern district of New York by John J. Stewart against the plaintiffs herein upon certain of the coupons originally attached to said bonds said Stewart recovered judgment against the plaintiff in this suit for the amount of such coupons, with interest, which judgment was paid by the plaintiff in this suit."

II. Repliant expressly admits the allegations contained in the second defence set forth in said answer, numbered paragraph "1," which allegation is as follows: "That the said railroad is still in said town and is being operated therein, and has been and is of great pecuniary advantage and benefit to the said town."

III. And this plaintiff and repliant, in reply to the third defence in defendant's answer herein to certain allegations and aver-
31 ments therein contained, denies and upon its information and belief avers and alleges that each and every of the following allegations and statements contained in said answer are false and untrue, and this repliant will upon the trial of this action maintain and prove the same and each and every of the same to be untrue, namely: "The commissioners mentioned in the complaint, who were duly authorized thereto and duly appointed such commissioners by a judgment of the county court of Tompkins county, in the State of New York, in the matter of the petition of James A. Burr and others, tax-payers of said town, on the second day of March, A. D. 1871; and the said commissioners, while the said judgment was still in full force, issued and delivered the said bonds to the Cayuga Lake Railroad Company, certifying in and by said bond that The Town of Lansing, the plaintiff, was authorized to sub-

scribe to the stock of the Cayuga Lake Railroad Company and to issue town bonds in payment therefor to the amount of $75,000, — thereupon, upon the faith and credit and in behalf of said town, for value received, promised to pay to the bearer of each of the said 75 bonds the sum of $1,000 on the first day of January, in the year 1902, with interest at 7 per cent. per annum from the first day of January, 1872;" that on the contrary thereof this repliant alleges and avers upon information and belief that said commissioners had no authority to sign or to issue said bonds or any of them as public officers for the reasons and by reason of the facts and allegations alleged in its complaint in this action; that said judgment was void and of no effect in law or in equity and never had any valid force or effect to authorize the issuing of such bonds.

Third. For a third reply.

I. And this plaintiff and repliant upon information and belief denies the truth of each and every of the following allegations and matters stated in the second paragraph of the third defence of the defendant's answer herein, which read as follows: "That
32 this defendant bought the said bonds and paid a valuable consideration for them, to wit, a one-third interest in a certain ranch in the State of Texas, which one-third interest was worth at least the sum of $50,000, in reliance upon the certificates of the said officers and without any notice of any kind that there was any defense whatever to the said bonds or any of them." And plaintiff, repliant herein, avers upon its information and belief that, on the contrary of such allegation and such matters so stated in said answer, the defendant paid no consideration for said bonds; that he did not pay one-third interest in a certain ranch in the State of Texas, worth at least the sum of $50,000, for said bonds, or any other consideration whatever, in reliance upon the certificates of said officers or without any notice of any kind that there was any defense whatever to the said bonds or any of them; and upon its information and belief the plaintiff avers that at the time of his, the defendant's, pretended purchase of the said bonds he had full notice and information of the defenses to the said bonds, which are set forth at large in the complainant's complaint or declaration in this action.

All of which matters or things this repliant is and ever will be ready to maintain and prove as this honorable court shall direct, and humbly pray- as in and by its said complaint and declaration it has already prayed.

Dated February 4, 1888.

HOWLAND & WHEELER,
Attorneys for Plaintiff, 131 *Genesee St., Auburn, N. Y.*

UNITED STATES OF AMERICA,
State of New York, County of Cayuga, City of Auburn, } ss:

Eber O. Wheeler, being duly sworn, deposes and says that he is one of the attorneys for the plaintiff named in the above-entitled

action; that he has read the above replication and knows the
33 contents thereof, and that the same is true of his own knowledge except those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

That the reason why this affidavit and application is made by this deponent is because Horatio Brown, who is the supervisor of The Town of Lansing, plaintiff herein, resides in the town of Lansing, in the county of Tompkins, and does not reside and is not within the county of Cayuga, the county where the attorneys for the plaintiff, Messrs. Howland & Wheeler, reside; that the town of Lansing, where said Brown resides and now is, is many miles from the city of Auburn, where his said attorneys reside, and that the said Brown is very lame and decrepit and in poor health; and, further, that all material allegations contained in said pleading or replication *is* within the personal knowledge of the deponent; that he has examined and thoroughly investigated all the matters of fact and law contained and involved in the issue and pleadings in this case and, as he verily believes, to a far greater extent and has far greater knowledge of them and information concerning them than has said Brown, and from the knowledge and information which the deponent has derived and become possessed of from the examination of said facts and the law of the case he verily believes that he is better qualified to verify said replication than the said supervisor of said town, who, by law, is the legal officer representing said town and who would be the proper officer to verify said replication for the plaintiff, which is a domestic corporation located in the county of Tompkins, in the State of New York.

E. O. WHEELER.

Sworn to and subscribed before me this 19th day of March, 1888.

S. EDWIN DAY,
Cayuga County Judge.

34 *Stipulation.*

United States Circuit Court for the Northern District of New York.

THE TOWN OF LANSING
against
JOHN T. LYTLE.

We hereby consent that the plaintiff may make and file a general replication to the answer in this action, or to any part thereof, within ten days from this date, and that the defendant may, within twenty days from this date, file a cross-bill in such form as he shall be advised. A copy thereof shall be served upon the plaintiff's attorney, and he shall have twenty days to make and file his answer thereto, a copy of such answer to be served upon the attorneys for the defendant, John T. Lytle.

March 17th, 1888.

HOWLAND & WHEELER,
Plaintiff's Attorneys.
SHEARMAN & STERLING,
Defendant's Attorneys.

35 *Cross-Bill.*

Circuit Court of the United States for the Northern District of New York.

JOHN T. LYTLE
against
THE TOWN OF LANSING.

To the judges of the circuit court of the United States for the northern district of New York:

John T. Lytle, of Lytle, Texas, and a citizen of the State of Texas, brings this his cross-bill against the Town of Lansing, a municipal corporation created and existing under the laws of the State of New York and located in the county of Tompkins, in the said State, and thereupon your orator complains and says upon his information and belief—

I. That he is a citizen of the State of Texas, and that the defendant is a municipal corporation created and existing under the laws of the State of New York.

That by an act of the legislature of the State of New York entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April 2, 1850, so as to permit municipal corporations to aid in the construction of railroads," passed May 18, 1869, it was enacted that a majority of the tax-payers of any town or other municipal corporation owning or representing a majority of the taxable property of such town or corporation might present their petition to the county judge of the county in which such town was located, setting forth the facts as provided by said act — expressing their desire to aid in the construction of such railroad as should be named in said pe-

36 tition, and that thereupon the said county judge should order a notice to be forthwith published in a newspaper published in such county, directed to whom it may concern, setting forth that upon a day therein named he would proceed to take proofs of the facts alleged in said petition, and by which act it is further provided that if at such time and place, upon taking such proofs, it should appear satisfactorily to him that such petitioners do constitute a majority of the taxable property as aforesaid that the said county judge should so adjudge and determine and should cause the same to be entered of record in the clerk's office of said county, such judgment and the record thereof to have the same force and effect as other judgments and records in courts of record in said State.

And it was further thereby enacted that if the said county judge should so adjudge and determine as aforesaid he should forthwith appoint and commission three freeholders of such town to be commissioners for the purpose of subscribing for the stock of such railroad and of issuing the bonds of such municipal corporation in payment therefor, and to discharge such other duties as are provided in said act and the acts of said legislature amendatory thereof; but such bonds were not to be issued to an amount beyond 20 per

cent. of the assessed valuation of such taxable property as shown by the last preceding assessment-roll, and such bonds were to be issued by such commissioners, sealed with their seals, payable at the expiration of thirty years, with interest at 7 per cent. per annum, payable semi-annually, not to exceed in the aggregate the amount set forth in said petition.

And it was further by said act enacted that the said bonds should also bear interest warrants (commonly called coupons), corresponding in number and amounts with the several payments of interest to become due thereon, and that the said commissioners should subscribe in the name of their said town to the stock or bonds of the railroad corporation so named in the said petition to an amount equal to the amount of bonds so created by them, and to pay
37 for the same by exchanging the said bonds therefor at par, and that such municipal bonds so issued pursuant to the provisions of said act should be a charge upon the real and personal property within the limits of said municipal corporation, the principal and interest thereof, when due, to be collected and paid in like manner as other debts, obligations, and charges against the said municipal corporation.

II. That in pursuance of the said act, on or about the 10th day of December, 1870, certain petitions of the tax-paying inhabitants of the said town of Lansing were duly presented to the Honorable Mills Von Valkenburg, who was at that time the county judge of the said county of Tompkins, duly verified by the oath of one of the said petitioners, setting forth that such petitioners were such a majority of tax-payers, representing such a majority of the taxable property of the said town of Lansing as aforesaid, duly setting forth the desire of the said petitioners according to the said act; that the said town of Lansing should create and issue its bonds to the amount of seventy-five thousand dollars ($75,000), and to invest the same or the proceeds thereof in the stock of the Cayuga Lake Railroad Company, which company was at that time a railroad corporation formed and acting under the general railroad acts of the State of New York and projecting its railroad through the said town of Lansing, by which petitions it was duly claimed that the said petitioners were a majority of the taxable inhabitants of said town and representing the required majority of the property of said town according to the requirements of said act.

III. And thereupon the said county judge duly took cognizance of the said matter and duly made his order, as authorized by said act, requiring public notice to be given by advertisement in a newspaper published in said county to the effect that on the 24th day of December, 1870, at his office in Ithaca, at 10 o'clock in the forenoon, he, the said county judge, would proceed to take proofs of the
38 allegations of said petition and the facts therein set forth according to said act, which notice was duly published, as required by said act, in the "Ithaca Journal," a newspaper published weekly in said city of Ithaca and county of Tompkins.

IV. And thereupon afterwards and at the time and place so appointed the said county judge did proceed to take the proofs as re-

quired by said act, and, upon such taking being duly held and concluded, he, the said county judge, did adjudge and judicially determine, under and according to the said act, that the said petitioners whose names appeared upon said petition duly executed and signed the same; that they were tax-payers of the said town, as appeared by the last preceding tax-list of said town of Lansing, and that they, the said petitioners, constituted and represented a majority of the tax-payers of said town and owned and represented a majority of the taxable property of the said town assessed and appearing upon the said last preceding tax-list or assessment-roll of said town; that the sum of $75,000 mentioned in said petition was less than 20 per cent. of the whole taxable property of the said town, and that all the requirements of the law respecting the creation and issuing of the bonds of said town to the amount of $75,000 and for the investment of the same in the stock of the said Cayuga Lake Railroad Company had been fully complied with by said petitioners.

V. And thereupon the said county judge did duly make up a record of judgment to the effect aforesaid and did duly file the same and cause the same to be duly recorded in the office of the clerk of said county on the 21st day of March, 1871, according to the said act, and the same still remains of record, and by which judgment and order the said county judge did then and there duly appoint three freeholders of the said town of Lansing commissioners under the said act—that is to say, one Darius Hall, one John T. Knettles, and one Alonzo H. Clark—who were thereby authorized and re-
39 quired, with all convenient despatch, to make and execute the bonds of the said town of Lansing under the said act and likewise to do, execute, and perform all other the duties as such commissioners devolving upon them under the provisions of said act aforesaid.

VI. And thereupon afterwards the said commissioners, Hall, Knettles, and Clark, did duly qualify to the said office and enter upon the discharge of the duties of the same and did duly subscribe, in the name of the said town of Lansing, for 750 shares of the capital stock of the said The Cayuga Lake Railroad Company on or about the 19th day of September, 1871, and afterwards, and in further performance of their duty and according to the said order and judgment of the said county judge, they did create and issue, sealed with their seals, signed with their names, and certified by said commissioners, the bonds of the said town of Lansing to the amount in all of $75,000, all in the same words and figures, being seventy-five bonds of $1,000 each of principal, numbered from one to seventy-five, inclusive, payable in thirty years from January 1, 1872, which was the date from which interest thereon began to be payable, and bearing interest, payable semi-annually on the first day of January and July in each year, beginning on the first day of July, 1872, with coupons or interest warrants attached to each bonds, all in the same words, except as to the maturity thereof and except that some of the said coupons were signed by one of the said commissioners and some by the other commissioners in usual form, representing severally each semi-annual obligation of interest to

accrue by the terms of said bonds as such interest should thereafter become due and payable, a copy of one of which coupons is as follows:

"$35. The town of Lansing, county of Tompkins, will pay the bearer hereof, at the Fourth National Bank of New York, in
40 the city of New York, on the 1st day of July, 1884, the sum of thirty-five dollars for six months' interest then due on bond No. —.

(Signed) DARIUS HALL,
Commissioner."

VII. And thereupon, on or about the 19th day of September, 1871, they, the said commissioners, duly received from the said railroad company the seven hundred and fifty shares of its capital stock for which they had subscribed as aforesaid, and duly paid for the same, as authorized by said act, by exchanging the said bonds and coupons for said stock at par to the amount aforesaid of $75,000.

VIII. That afterwards, and before any of the bonds or coupons thereto attached became due or payable, the said railroad company pledged and transferred the whole of the said bonds and coupons to Leonard, Sheldon & Foster, who received the same in good faith and lent and advanced to said railroad company, in or about October, 1871, $50,000 upon the faith and security of said bonds that were afterwards, and before the maturity thereof, assigned by said Leonard, Sheldon & Foster to Elliott, Collins & Co. in good faith and for a valuable consideration, and that they sold the same to purchasers whose names are to your orator unknown, who received the same in good faith and paid a valuable consideration therefor.

IX. That on or about the first day of February, 1884, and long before the maturity of the said bonds and the said coupons hereinbefore referred to, which fell due on the first day of July, 1884, your orator purchased in good faith and for value all the said bonds and the coupons attached thereto, payable on the first day of July, 1884, and at any time thereafter, and has ever since held and owned the same.

X. That among the coupons thus purchased as aforesaid
41 by your orator and now held by him are seventy-five (75) coupons as aforesaid falling due by their terms on the first day of July, 1884; seventy-five (75) falling due on the first day of January, 1885; seventy-five (75) falling due on the first day of July, 1885; seventy-five (75) falling due on the first day of January, 1886; seventy-five (75) falling due on the first day of July, 1886; seventy-five (75) falling due on the first day of January, 1887; seventy-five (75) falling due on the first day of July, 1887, and all the successive series of coupons attached to said bonds, being seventy-five (75) in each series and falling due respectively on the first days of January and July in every year until the maturity of said bonds, and that by each of the said coupons the said town of Lansing promised to pay to the bearer thereof, at the Fourth National Bank of New York, in the city of New York, on the dates respectively above mentioned, the sum of $35.

XI. That before the commencement of the action by the said town of Lansing hereinafter mentioned each of the said coupons down to and including those which fell due July 1, 1887, was duly presented to the said Fourth National Bank of New York, in the city of New York, for payment, and payment thereof was refused, nor has the defendant paid any part of the amount due by the terms of any of the said coupons, nor has it deposited in said Fourth National bank any fund for the payment of the same or any of them; but that owing to the said action and the injunction granted therein, as hereinafter stated, none of said coupons have since been presented to the said bank.

XII. And your orator further shows that on or about the 13th day of May, 1887, the said town of Lansing commenced an action in the supreme court of the State of New York against him, praying that he be enjoined from disposing of the said bonds and accompanying coupons, and that the same might be declared null and void and canceled on the ground that they were unlawfully
42 and illegally issued, and also alleging that divers suits at law had been commenced against the said town upon divers series of the coupons attached to said bonds, and that the said town would be continually subjected to lawsuits and divers persecutions by different owners of said bonds unless your orator should be enjoined from collecting by any legal proceeding any sum whatever from said town upon said bonds or coupons; that in said action an injunction issued which restrained your orator from bringing any action at law upon the said bonds and coupons or any of them against said town, which injunction is now in force; that said action was thereafter duly removed to the United States circuit court for the northern district of New York, and your orator duly filed his answer, denying that said bonds and accompanying coupons were unlawfully and illegally issued and praying that the bill of complaint be dismissed; that in order to prevent a multiplicity of actions and to enable the whole controversy between the said town and your orator to be finally determined in this suit, so that their respective rights in the premises may be adjudicated therein and such relief be given as shall be agreeable to equity and good conscience, your orator brings this his cross-bill.

To the end, therefore, that the said Town of Lansing, defendant, may, if it can, show why your orator should not have the relief hereby prayed, and may, under its corporate seal and according to the best and utmost of its knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the matters stated in this bill, an answer under oath being hereby waived;

And that the defendant may answer the premises and may be decreed to pay your orator eighteen thousand three hundred and seventy-five dollars ($18,375), with interest on $2,625 from July 1, 1884; on $2,625 from January 1, 1885; on $2,625 from July 1, 1885; on $2,625 from January 1, 1886; on $2,625 from July 1, 1886; on $2,625 from January 1, 1887, and on $2,625 from July 1,
43 1887, and also the amount of the several other coupons which have already become due or which may hereafter become

due, with interest upon the same from the respective dates upon which they become due and payable, upon the said coupons being surrendered, which your orator hereby offers to do;

And that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require and to this honorable court shall seem meet—

May it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said Town of Lansing, defendant, commanding it, on a day certain therein to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises and to stand to, perform, and abide such further order, direction, and decree as may be made against it.

And your orator, as in duty bound, will ever pray.

SHEARMAN & STERLING,
Solicitors for Complainant.

THOS. G. SHEARMAN,
EVERETT P. WHEELER,
Of Counsel.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

John A. Garver, being duly sworn, deposeth and saith that he is one of the attorneys for the complainants in the foregoing bill named and has read the same and knows the contents thereof; that the said bill is true of his own knowledge except as to those matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true; that the reason why this affidavit is not made by the complainant is that he is a resident of Texas and not within the State of New York, in which State
44 deponent resides; that the sources of deponent's knowledge and the grounds of his belief respecting the allegations of said bill are the possession and examination by him of the bonds and coupons and of a copy of the record therein alleged, and also of the various papers in the suit therein mentioned.

JOHN A. GARVER.

Sworn to before me April 7, 1888.

CHAS. F. HALSTED,
[L. S.] *Notary Public, Kings Co.*

Cert. in N. Y. Co.

45 *Appearance.*

Circuit Court of the United States, 2d Circuit, for the Northern District of New York.

JOHN T. LYTLE
ag't
THE TOWN OF LANSING.

Please take notice that we appear as the attorneys for the defendant, "The Town of Lansing," in the above-entitled action or cross-bill filed April 9th, 1888, with the clerk of this court.

Dated April 12th, 1888.

HOWLAND & WHEELER,
Attorneys for Defendant, 131 Genesee Street, Auburn, Cayuga Co., N. Y.

To Shearman & Sterling, Esq-., attorneys for complainant, 45 William street, New York.

Indorsed: John T. Lytle ag't The Town of Lansing. Appearance for defendant. Filed Apr. 13, 1888. W. S. Doolittle, clerk.

46 *Answer to Cross-Bill.*

Circuit Court of the United States, Second Circuit, for the Northern District of New York.

JOHN T. LYTLE
vs.
THE TOWN OF LANSING.

To the judges of the circuit court of the United States for the northern district of New York:

The Town of Lansing, a municipal corporation created under the laws of the State of New York and being one of the towns in Tompkins county, in said State, answers the cross-bill in the above-entitled action or cross-bill, now and at all times hereafter saving and reserving unto itself all benefits and advantages of exception or exceptions which can or may be taken or had to the many errors, uncertainties, and imperfections in said cross-bill contained or omitted, and for answer thereto and to so much thereof and to such parts thereof as this defendant, the said Town of Lansing, is advised are material and necessary for it to make answer to, as follows, viz:

First.

The said Town of Lansing admits that it is a municipal corporation created and existing under the laws of the State of New York, but as to whether the complainant herein, John T. Lytle, is a resident or citizen of the State of Texas the defendant has not any knowledge or information thereof sufficient to form a belief, and therefore denies the same.

And the said Town of Lansing, defendant, admits that
47 certain acts of the legislature of the State of New York were passed and still exist as valid laws of said State of New York, entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same, passed April 2d, 1880, so as to permit municipal corporations to aid in the construction of railroads, passed May 18th, 1869;" but this defendant, The Town of Lansing, denies that it was enacted therein that a majority of the tax-payers of any town or other municipal corporation owning or representing a majority of the taxable property of such town or corporation might present their petition to the county judge of the county in which such town was located, setting forth the facts as provided by said act, expressing their desire to aid in the construction of such railroad as should be named in said petition, and defendant denies that the said enactments contained in said acts of the legislature of the State of New York are fully and truly stated in said cross-bill, but this defendant alleges and avers that, on the contrary thereof and in addition thereto, there are many material conditions and requirements and provisions of said statutory enactments omitted from and others erroneously misstated in said cross-bill, and this defendant herein, in answer to the allegations and statements in the cross-bill touching the enactments of the said laws of the legislature of the State of New York herein, avers and alleges that in and by said acts and titles it is enacted that—

"Whenever the majority of the tax-payers of any municipal corporation in this State, whose names appear upon the last preceding tax-list or assessment-roll of said corporation as owning or representing a majority of the taxable property in the limits of said corporation, shall make application to the county judge of the county in which such corporation is situated, by petition, verified by one of the petitioners, setting forth that they are such a majority of tax-payers and represent such a majority of taxable property, and that they desire that such municipal corporations shall create and issue its bonds to an amount named in such petition (but not to exceed twenty per cent. of the whole
48 amount of the taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock or bonds (as said petition may direct) of such railroad company in this State as may be named in said petition, it shall be the duty of said county judge to order that a notice shall be forthwith published in some newspaper in such county, or if there be no newspaper published in said county, then in some newspaper printed in an adjoining county, directed to whom it may concern, setting forth that on a day therein named, which shall not be less than ten days nor more than thirty days from the date of such publication, he will proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition and as to the amount of taxable property represented by them," &c.

And it is also enacted therein that "it shall be the duty of the said county judge at the time and place named in said notice to proceed to take proof of the said allegations in said petition, and if

it shall appear satisfactory to him that said petitioner or the said petitioners and such other tax-payers of said town as may then and there appear before him and express a desire to join as petitioners in said petition to represent a majority of the tax-payers of said municipal corporation, as shown by the last preceding tax-list or assessment-roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine and cause the same to be entered of record; and such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State."

Second.

And this defendant, The Town of Lansing, further answers the said cross-bill touching contents of the said petition and the filing of the petition of the tax-payers in said town of Lansing, set forth in the second paragraph, count, or subdivision of said cross-
49 bill. This defendant denies that on the 10th day of December, 1876, or at any other time, certain petitions of the tax-payers of the said town of Lansing were duly presented to the Honorable Miles Van Valkenberg, county judge of Tompkins county, duly verified by the oath of one of said petitioners, setting forth that such petitioners were such a majority of tax-payers, representing such a majority of the taxable property of the said town of Lansing as aforesaid, duly setting forth the desire of the said petitioners, according to said act, that the said town of Lansing should create and issue its bonds to the amount of seventy-five thousand dollars ($75,000), and to invest the same or the proceeds thereof in the stock of the Cayuga Lake Railroad Company, or that such company was at that time or at any time a railroad corporation formed and acting under the general railroad acts of the State of New York and projecting its railroad through the said town of Lansing, by which petition it was duly claimed, or that the said petitioners were a majority of the taxable inhabitants of said town or representing the required majority of the property of said town, according to the requirements of the said act.

But that, to the contrary thereof, this defendant, for answer to the said allegations contained in said cross-bill, alleges that the truth and the facts are that the sole petition or petitioner represented to said county judge by or on behalf of the alleged tax-payers or citizens of the said town of Lansing as the foundation or grounds for the proceedings to bond said town in aid of said railroad company and to issue the bonds and interest warrants or coupons named in the said cross-bill were in fact about sixteen separate papers called petitions, each of which was precisely like the others in all respects, except as to dates and signatures of alleged tax-payers, and that the following is a full and true copy of each of such petitions, viz:

50 "To the Hon. M. Van Valkenbergh, county judge of Tompkins county:

"The petition of the undersigned, residents and others, and

whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

"That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars and to invest the same or the proceeds thereof in the stock or bonds, or both, of the Cayuga Lake Railroad Company, in pursuance of an act of the legislature of the State of New York entitled 'An act to amend an act to authorize the formation of railroad corporations and to regulate the same, passed April 2d, 1850, so as to permit municipal corporations,' &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

"And in furtherance of the objects of said act we have hereunto signed our names at the said town of Lansing.

"Names. | Property taxed."

Then followed the names of different individuals and different parcels of property to each of said petitions and an oath or verification of one only of the petitioners whose name appeared on one of said petitions only, viz., James A. Burr, whose name appeared as petitioner on a part only of said petitions, and that those had only a minority of the names signed to them.

And this defendant, the said Town of Lansing, avers and alleges that said petition and petitions were wholly defective, irregular, and void and did not contain, allege, or set forth the facts necessary and sufficient to give to the said county judge any jurisdiction, right, power, or authority to entertain said petition or to proceed thereunder or to make any order or take any proof or to render or
51 enter any judgment or determination thereon or in any proceedings based thereon; that said petition did not set forth or contain any statement or allegation that said petitioners were a majority of the tax-payers of said town of Lansing or municipal corporation in this State, whose names appeared upon the last preceding tax-list or assessment-roll of said corporation as owning or representing a majority of the taxable property in the corporate limits of such corporation (the said town of Lansing), nor did said petition or petitions set forth that said petitioners were such a majority of tax-payers and represented such majority of taxable property, and that they desired that such municipal corporation should create and issue its bonds to an amount named in such petition (but not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll) and invest the same or the proceeds thereof in the stock or bonds (as the said petition may (or did) direct), but wholly failed to state or set forth such jurisdictional facts, as expressly required by said statute, and by reason of such omission and defects in said petition defendant alleges and avers that the said county judge had no jurisdiction of the persons or subject-matter to proceed and hear and determine and render judgment in said matter, and by reason

thereof the whole of such proceedings and judgment and the issuing and making said bonds were null and void.

And this defendant denies upon information and belief that the said Cayuga Lake Railroad Company, at the time named in the cross-bill or at any time, was a railroad corporation formed and acting under the general railroad acts of the State of New York and projecting its railroad through said town of Lansing, or that by which petitions it was duly claimed that the said petitioners were a majority of the taxable inhabitants of said town or represented the required majority of the property of said town, according to the requirements of said act.

52 And defendant alleges and avers on information and belief that the articles of association and incorporation of said pretended railroad company failed to state and did not contain "the name of each county in this State through or into which the said railroad was made or is made or intended to be made;" that the statutes of the State of New York, viz., chapter 140, Laws of 1850, and acts amendatory thereof, expressly required the said articles of incorporation to state the above facts, and that the same was and is a jurisdictional defect or omission, and that the said county judge had no right to adjudicate and determine or authorize said town to issue its bonds in aid of said railroad, having no legal corporation, and for that reason said bonds are null and void.

Third.

And this defendant denies that said county judge did duly take cognizance of said matter or duly make his order, as authorized by said act, requiring notice to be given as alleged in the cross-bill, but defendant avers and alleges on information and belief that notwithstanding the said county judge did assume to take cognizance of said matter and make the order to publish the notice to take proof of the allegation of said petition, as is stated in the cross-bill, as defendant admits, yet defendant avers and insists that he had no right, jurisdiction, or authority to do so by reason of the jurisdictional defects in said petition as hereinbefore stated.

Fourth.

And on information and belief defendant admits that the said county judge at the time and place appointed in said notice did proceed and take proof and did assume to adjudge and determine that the said petitioners whose names appeared upon said petition executed and signed the same, were a majority of the tax-payers of said town, and owned or represented a majority of the taxable property

53 of said town, and that the sum of $75,000 was less than twenty per cent. of the whole taxable property of said town, and that all the requirements of the law respecting the creation and issuing the bonds of the said town to the amount of $75,000, &c., had been fully complied with by said petitioners; but this defendant alleges and avers that the subject-matter or the persons in said proceedings were not legally nor properly before him, the said county judge, and he had no right or jurisdiction over said matter or per-

sons; that the petition upon which said proceedings were based and wholly grounded contained no allegation or statement that the signers of such petition "were a majority of the tax-payers of said municipal corporation (the town of Lansing) whose names appeared upon the last preceding tax-list or assessment-roll of said corporation as owning or representing a majority of the taxable property in the corporate limits of such corporation or town," nor did said petition direct how the said bonds or the avails thereof should be invested, whether in the stock or bonds of said railroad company, nor was said railroad company a legal corporation, and that, for the reason aforesaid, the county judge had no right or jurisdiction to hear or judicially determine or adjudge any of the said matters alleged in said cross-bill, and his said judgment and said bonds and all his proceedings thereunder were null and void.

Fifth.

And this defendant, further answering the fifth subdivision or paragraph or count in said cross-bill, admits that said county judge did assume to make up a record of judgments to the effect stated therein and caused the same to be filed and recorded in the office of the clerk of said county of Tompkins on the 21st day of March, 1871, in form and substance as alleged in said cross-bill, and that he did appoint the said Hall, Knettles, and Clark commissioners, who did assume to make and issue the bonds named and transferred the same to said pretended railroad company and received
54 the capital stock of said company in form as alleged in said bill; and defendant admits each and every of the allegations, facts, and averments contained in the V and VII counts, paragraphs, or subdivisions of said cross-bill which are not herein expressly denied; but this defendant expressly denies that said county judge duly entered or made up said judgment or duly appointed said commissioners or that said commissioners were thereby authorized to make or execute the bonds of said town of Lansing under said act or to exercise or to perform all or any duties as such commissioners whatever; that as to whether said commissioners did or did not duly qualify to said office or enter upon the discharge of the duties of the same or did duly make or subscribe them in the name of said town of Lansing for 750 shares of the capital stock of said "The Cayuga Lake Railroad Company," or afterwards did create and issue, sealed with their seals, signed with their names, certified by said commissioners, the bonds of the said town of Lansing to the amount of $75,000, or seventy-five bonds of $1,000 each, with interest payable as alleged in said bill, this defendant has not any knowledge, information, and belief as to either of said allegations, and it therefore denies the same.

Sixth.

This defendant, answering each and every allegation set forth and contained in paragraph VII in said cross-bill, says that it has not any knowledge or information as to each or any of said allegations sufficient to form a belief, and it therefore denies the same.

Seventh.

This defendant, answering each and every of the allegations contained and set forth in the VIII paragraph, count, or subdivision of said cross-bill, says that as to each and every of such allegations it has not any knowledge or information thereof sufficient to form a belief, and it therefore denies the same.

55 Eighth.

This defendant, answering each and every allegation contained and set forth in the IX paragraph, count, or subdivision of said cross-bill, says that it has not any knowledge or information as to each or any of them sufficient to form a belief, and it therefore denies the same.

Ninth.

This defendant, answering each and every allegation and averment alleged and set forth in the X count, paragraph, or subdivision of the said cross-bill, says it has not any knowledge or information thereof or as to each or any such allegations sufficient to form a belief, and it therefore denies the same.

Tenth.

This defendant, answering each and every allegation set forth in the XI count, subdivision, or paragraph in said cross-bill, alleges and avers that it has not any knowledge or information as to each or any such allegations sufficient to form a belief, and it therefore denies the same.

Eleventh.

The defendant, answering the XII count, paragraph, or subdivision in said cross-bill contained, admits the allegations and facts therein alleged and set forth, except that this defendant denies on information and belief that said action therein named was thereafter or at any time duly removed into the United States circuit court for the northern district of New York.

Twelfth.

56 And this defendant, further answering the said cross-bill, alleges that on or about the 13th day of May, 1887, said town of Lansing commenced an action against said John T. Lytle, as in said cross-bill alleged, in the supreme court of the State of New York by personal service of a summons and complaint duly verified, which complaint, amongst other things, alleged that said identical bonds and coupons upon which the plaintiff seeks to recover in his cross-bill were issued without any lawful right or authority; that the petition presented to the county court judge by the tax-payers of the town of Lansing for bonding said town in aid of the Cayuga Lake railroad did not contain nor purport to contain a majority of the tax-payers of said municipal corporation whose names appeared upon the last preceding tax-list or assessment-roll of said

corporation or town as owning or representing a majority of the taxable property in the limits of said corporation, and, further, that said tax-payers in their petition did not direct how said bonds or the avails thereof should be invested, whether in the stock or bonds of the said railroad company, and also upon the ground that the said Cayuga Lake Railroad Company was not a legal and valid corporation, for the reason that its articles of incorporation failed to state the name of each county in this State through or into which it is made or intended to be made, as required by the statutes under which it was attempted to be incorporated, and for the reason that a majority of the tax-payers as qualified by law had not signed said petition, and also upon the further facts, to wit: That upon proceedings in the nature of a certiorari duly instituted in the supreme court of the State of New York to review the said proceedings before said county judge and his judgment and determination therein and to determine the legality thereof (being the same proceedings alleged in the cross-bill herein), and that after due returns thereto, in obedience to said mandate or writ of certiorari to the said supreme court, that afterwards and thereupon the said supreme court of the State of New York in general term, after a due hearing and argument therein, the said supreme court did in all things reverse and set aside and hold for naught the said judgment
57 and determination of the said county judge on or about the month of May, 1872, and such judgment was duly entered and perfected in the clerk's office of Tompkins county on or about May, 1872, and still remains unreversed and the valid judgment of said court; all of which proceedings and pleading and decision *was* and *is* true and are more fully set forth in the complaint in this action, to which said cross-bill is filed and to which defendant begs leave to refer and make part of his answer herein; and this defendant alleges that in said action in the supreme court of the State of New York, wherein The Town of Lansing is plaintiff and John T. Lytle is defendant, such proceedings were thereafter duly had in said court, after the commencement thereof, in pursuance to and in accordance with the law and the practice of said court, and, upon a trial and hearing of the proofs before said court, the said court did, on or about the 9th day of July, 1887, duly adjudge, order, and decree, among other things, that the said bonds and interest warrants or coupons upon which said John T. Lytle seeks to recover in this action were wholly illegal and void and wholly unauthorized, and that the said Lytle was not a *bona fide* owner thereof for value, and ordered and adjudged and decreed that the whole of the said 75 one-thousand-dollar bonds, with the whole of the said coupons thereon, be by the said John T. Lytle delivered up, canceled, and destroyed.

And this defendant alleges that said judgment was duly entered and recorded in the Tompkins county clerk's office on or about the 15th day of July, 1887, and that it is also adjudged and decreed in and by said judgment and decree so as aforesaid made and entered that the said John T. Lytle, his agents and attorneys, be and are perpetually enjoined from in any manner transferring or disposing of any of the said bonds or coupons and from taking any steps to

collect the same or any part thereof, and that the said judgment and decree thus adjudging and decreeing in regard to the identical bonds and coupons in said cross-bill set forth has, ever since the
58 entry and record thereof, stood and still stands and remains the valid and subsisting judgment of the said supreme court of the State of New York, wholly unreversed and in no way or manner set aside; and this defendant is advised and will insist in this its said answer to the said cross-bill herein that said judgment and decree is *res adjudicata* and a bar to said Lytle's recovery, as in his cross-bill he demands, and that he ought not further to maintain his suit or bill therefor or for the causes alleged.

Thirteenth.

And, for a further answer and defense to said cross-bill herein, this defendant alleges that at the October, 1887, special term of the supreme court of the State of New York the said John T. Lytle made a motion to the said court, asking said court to set aside said judgment as matter of favor and open his default therein and permit him to make and serve an answer and defend said action on the merits; that thereupon and after a full hearing and argument of counsel for the respective parties said court made an order to this extent only, viz., opening said default, and permitted the defendant to come in and serve his proposed answer within twenty days, which answer contained none of the material facts or claims in said cross-bill, but ordering expressly that said judgment should stand, and the injunction therein contained or heretofore granted against any transfer of the bonds or coupons in the suit, until the final determination of said action; and further ordered that defendant in that action, John T. Lytle, should stay all proceedings in the action then pending in the United States circuit court, and should make and serve a written stipulation upon the plaintiff's attorneys therein not to prosecute further said action or to bring any new action upon said bonds or said coupons or any of them until the further determination of that said action (in said State court), and it was ordered therein, among certain other things, that, unless such terms and conditions were complied
59 with, said motion should be and was expressly denied, and that thereafter and on the 31st day of December, 1887, the said John T. Lytle, by his attorneys, Shearman & Sterling, Esqs., did make and sign and serve upon the plaintiff's attorneys in said action, in pursuance to said order, a written or printed stipulation to the effect that said John T. Lytle would not prosecute further the action of John T. Lytle against The Town of Lansing then and now pending in the circuit court of the United States for the northern district of New York, and that he would not bring any new action upon the said bonds or coupons referred to in the complaint in that action (in State court) or any of them until the final determination of that action, to wit, the suit in State court; and this defendant is advised and verily believes and insists that the injunction aforesaid perpetually enjoining the said John T. Lytle from "taking any steps to collect said bonds or coupons or any part

thereof" until the final determination of said action in which and to which said cross-bill is filed, and defendant insists that *by* the terms and restraints aforesaid of said judgment and decree still being in full force in said State court and also in this court, and also the terms and conditions of said order permitting the said Lytle to serve his then proposed answer in the said action in State court, and also the terms of the stipulation of said Lytle made and served as aforesaid, prohibit said Lytle and deprive and prevent him by their legal and equitable construction and effect from maintaining said proceeding by cross-bill or otherwise collecting or attempting to collect said bonds or coupons or any part of them until the final determination of said action commenced in the State court, which is still pending and not tried and determined.

Fourteenth.

And this defendant, The Town of Lansing, for a further defense to the said cross-bill and to the legal right of the said John T.
60 Lytle to maintain the same for the purpose therein stated and for the causes stated and set forth in said cross-bill — that said Lytle claiming to be a citizen and resident of the State of Texas, while the town of Lansing is a municipal corporation of the State of New York; that the jurisdiction of the circuit court of the United States for the northern district of New York of the parties and subject-matter in said cross-bill contained being founded wholly and only on the fact that the action and cross-bill is between citizens of different States, the said circuit court of the United States for the northern district of New York has no cognizance and is restricted from taking cognizance of said suit or cross-bill; that said alleged bonds and coupons or interest warrants upon which said Lytle claims to recover in and by his said cross-bill having been made as is alleged and as they import to have been made by the town of Lansing, a municipal corporation, and that the assignor of said bonds and coupons, who transferred the same, being a resident also of the State of New York, *and* therefore no action being maintainable in said circuit court of the United States for the northern district of New York could have been prosecuted in said court to recover the contents of said bonds or coupons, if no assignment or transfer had been made; that by reason of the aforesaid facts the said circuit court of the United States for the northern district of New York has no jurisdiction or cognizance of the said subject-matter no*t* of the parties in said cross-bill, as is enacted in chapter 373 of an act of Congress passed May 3d, 1887, entitled "An act to amend an act of Congress approved March 3d, 1873, entitled 'An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes, and to further regulate the jurisdiction of circuit courts of the United States and for other purposes.'" And said cross-bill should be dismissed.

61 Fifteenth.

And this defendant, further answering said cross-bill, on information and belief alleges that the said John T. Lytle is not a *bona fide* owner nor holder of the bonds or coupons referred to in said cross-bill for value, and that he and every pretended owner and holder of the same have none of them ever been *bona fide* owners or holders of the same or any part thereof for value; but, on the contrary, each and every pretended owner and holder of said bonds or coupons and all of them have received them and by a mere colorable purchase or purchases taken them with full knowledge of all their defects and illegalities and fraudulent and unauthorized creation and inception, and have not paid any valuable consideration therefor, by reason of which said bonds and coupons are null and void in the hands of said Lytle.

Wherefore this defendant humbly prays that the plaintiff's, said John T. Lytle's, said cross-bill and all his proceedings therein may be dismissed and that this defendant may be adjudged and permitted to recover its costs and disbursements herein.

Dated April 25th, 1888.

HOWLAND & WHEELER,
Defendant's Attorneys, 131 *Genesee St., Auburn, N.Y.*

H. V. HOWLAND,
Of Counsel for Defendant, 131 *Genesee St., Auburn, N.Y.*

62 *Replication.*

Circuit Court of the United States for the Northern District of New York.

JOHN T. LYTLE
against
THE TOWN OF LANSING.

The replication of John T. Lytle, the plaintiff, to the answer of The Town of Lansing, defendant.

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, — sufficient in the law to be answered unto, and that the said answer of The Town of Lansing, defendant, is uncertain, untrue, and insufficient to be replied unto by this repliant; that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

SHEARMAN & STERLING,
Attorneys for the Plaintiff.

63 *Minutes of Hearing.*

At a special term of the circuit court of the United States for the northern district of New York, in the second circuit, held at Syracuse on the 27 day of Nov., A. D. 1889.

Present: The Honorable William J. Wallace, judge.

THE TOWN OF LANSING
vs.
JOHN T. LYTLE.

JOHN T. LYTLE
vs.
THE TOWN OF LANSING.

Argument on pleadings & proofs.

Mr. E. P. Wheeler is heard on behalf of John T. Lytle.
Mr. H. V. Howland is heard on behalf of The Town of Lansing.
Court here takes a recess until 2.30 p. m.

2 P. M.

Present as before.
Mr. Howland continues his argument.
Mr. Mathew Hale & Mr. E. P. Wheeler are heard in reply.
The court takes the papers.
Decision reserved.

64 *Final Decree.*

At a term of the circuit court of the United States of America for the northern district of New York, held at the court-house, in the city of Syracuse, on the 25 day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: Hon. William J. Wallace, circuit judge.

THE TOWN OF LANSING, Plaintiff,
against
JOHN T. LYTLE, Defendant. } In Equity.

JOHN T. LYTLE
against
THE TOWN OF LANSING. } On Cross-Bill.

This cause came on to be heard upon the printed records of the respective parties therein, at this term, and was argued by counsel for each of said parties, and thereupon, upon due consideration, it was—

Ordered, adjudged, and decreed that the defendant, John T. Lytle, surrender up the bonds and coupons described in the complaint in this action for cancellation, amongst other things.

Now, on motion of H. V. Howland, solicitor for the said complainant, The Town of Lansing, it is—

65 Ordered, adjudged, and decreed that the said defendant, John T. Lytle, produce and deliver each and every of the seventy-five one-thousand-dollar bonds, bearing date October 1, 1871, and purporting to be made by the town of Lansing and signed by Darius Hall, Alonzo H. Clark, and John T. Knettles, commissioners for the said town, each payable to bearer and due on the first day of January, 1902, with interest, payable semi-annually on the first day of January and July in each year, at the Fourth National Bank of New York, in the city of New York, together with each and every of the interest warrants or coupons attached to or securing the payment of the interest to become due on said bonds at the times and in the amounts aforesaid, and which interest warrants or coupons originally belonged to and were attached to said bonds and each and every of them and signed by either or all of said persons, Darius Hall, Alonzo H. Clark, John T. Knettles, as commissioners or commissioner; which said interest warrants or coupons purport to become due on the first day of July, 1884, and each and every of said coupons which purport to become due on each and every first day of January and first day of July thereafter until and including the first day of January, 1902; and that the said John T. Lytle shall immediately deliver or cause to be delivered each and every of said bonds and coupons to Honorable W. S. Doolittle, the clerk of this court, at his office, in the city of Utica, Oneida county, in the State of New York, or to his successor

66 in office, to be by him canceled and wholly destroyed, and that the said clerk shall receive said bonds and coupons and immediately cancel and destroy the same by writing or printing over his official signature on the back *and* of each and every of said bonds and coupons the words "canceled and destroyed this — day of —— by the order and judgment of the court," the true date of said act of cancellation to be filled in on said instrument by said clerk; and it is hereby—

Ordered, adjudged, and decreed that the said seventy-five one-thousand-dollar bonds and every of them and each and every of the said coupons described and referred to in the complaint in this action and above described were made and executed without authority of law, and each and every of them are null and void; and it is further—

Adjudged and decreed that the said defendant, John T. Lytle, was and is not a *bona fide* owner or holder of the said bonds or coupons; that he has not paid any consideration therefor, and that before he claims to have paid therefor and before January 28, 1885, the said Lytle has sufficient knowledge of their defects and unauthorized inception to destroy the alleged *bona fides* of the transaction of his alleged purchase of the same; and it is also further—

Adjudged that no prior owner or holder of said bonds or coupons has owned or held the same as *bona fide* owners or holders thereof for a valuable consideration or in the regular course of business; and it is further—

67 Ordered, adjudged, and decreed that the said John T. Lytle and his attorneys, agents, and servants and employees

and all and every other person or persons whomsoever be, and are hereby, forever enjoined and restrained from selling or transferring or in any manner using or meddling or interfering with said bonds or coupons or any of them except to produce and deliver the same up as aforesaid for cancellation and destruction, and each and every of such person or persons are hereby enjoined and restrained from prosecuting any action at law or in equity thereon or for the collection thereof and from any and all proceedings to collect the same or any part thereof by taxation or otherwise against the said town of Lansing or against any of its officers; and it is—

Ordered, adjudged, and decreed that the cross-bill filed by John T. Lytle be, and the same hereby is, dismissed with costs; and it is—

Adjudged, ordered, and decreed that the complainant, The Town of Lansing, recover of the defendant, John T. Lytle, its proper and legal costs and disbursements in this action, to be taxed by the clerk of this court and entered in this decree, amounting to the sum of $573.25, and that the complainant, The Town of Lansing, have execution therefor.

WM. J. WALLACE.

Indorsed: The Town of Lansing *v.* John T. Lytle. 5689. John T. Lytle *v.* The Town of Lansing. 5709. Decree. Filed Apr. 25, 1889. W. S. Doolittle, clerk.

68 Whereupon the said pleadings, process, orders, and final decree, together with other papers in said cause, are duly annexed hereto, and this decree is duly signed and enrolled, pursuant to the rules and practice of this court, this 25th day of April, A. D. 1889, at 3 o'clock in the afternoon.

W. S. DOOLITTLE, *Clerk.*

Indorsement on cover: Equity. Nos. 5689–5709. United States circuit court, northern district of New York. The Town of Lansing *vs.* John T. Lytle. John T. Lytle *vs.* The Town of Lansing. Enrolled decree. Howland & Wheeler, solicitors for The Town of Lansing. Costs, $573.25. Filed Apr. 25, 1889, at 3 o'clock p. m. W. S. Doolittle, clerk.

69 *Testimony and Exhibits in Behalf of the Town of Lansing.*

Stipulation.

THE TOWN OF LANSING *vs.* JOHN T. LYTLE. } In Equity.

JOHN T. LYTLE *vs.* THE TOWN OF LANSING. } On Cross-Bill.

It is stipulated that the testimony in the above causes may be taken before John M. Brainard, notary public, subject to such ob-

jections, except as to form, as may be noted before him, to be argued on the hearing.

Dated July 25th, 1888.

H. V. HOWLAND,
Attorney for Town of Lansing.
SHEARMAN & STERLING,
Attorneys for John T. Lytle.

70 *Testimony.*

United States Circuit Court, Northern District New York.

THE TOWN OF LANSING, Plaintiff,
vs.
JOHN T. LYTLE, Defendant.
} In Equity.

JOHN T. LYTLE, Plaintiff,
vs.
TOWN OF LANSING.
} Cross-Bill.

Evidence taken by stipulation before John M. Brainard, a notary public, at the office of H. V. Howland, Auburn, N. Y., July 25th, 1888.

Appearances: H. V. Howland, att'y for pl'ff and def't, Town of Lansing; Shearman & Sterling, att'y- for pl'ff and def't, John T. Lytle, by E. P. Wheeler, counsel.

Summons and Pleadings.

(Ex. A.)

Mr. Howland offered in evidence stipulation in U. S. circuit court in case of Town of Lansing *vs.* Lytle, dated Feb. 27, 1888; same received and marked in this case Ex. "B," J. M. B.; also order of special term of supreme court, N. Y., made on the 19th day of October, 1887, by Justice Boardman, which was marked U. S. circuit court, Town of Lansing *vs.* Lytle, Ex. "C," J. M. B.

71 Mr. Howland also offered stipulations dated December 31, 1887, and January 4, 1888, in the supreme court of N. Y., in the case of Town of Lansing *vs.* Lytle; which were marked respectfully U. S. circuit court, Town of Lansing *vs.* Lytle, Ex. "D" and Ex. "E," J. M. B. Papers on removal of cause to U. S. court were offered and marked Ex. "F;" also petition, judgment-roll, and oath of commissioners before county judge, and marked U. S. circuit court, Town of Lansing *vs.* Lytle, Ex. "G," J. M. B.; also papers in proceedings on certiorari in the N. Y. supreme court, which were marked U. S. circuit court, Town of Lansing *vs.* Lytle, Ex. "H," J. M. B.

Counsel for John T. Lytle objected to the admissibility of these proceedings, viz., on certiorari, on the ground that neither he nor any person under whom he claimed was a party to the proceedings.

Mr. Howland offered in evidence a certified copy of the articles of

incorporation of Cayuga Lake R. R. Co., filed in the office of the secretary of state July 1, 1867, marked U. S. circuit court, Town of Lansing *vs.* Lytle, Ex. "I," J. M. B.

Mr. Howland read in evidence the testimony of Alonzo H. Clarke, on pages 50, 51, and 52, in case and exceptions of Breckenridge *vs.* Lansing, in the U. S. circuit court. Objections are noted the same as are noted in case.

Also evidence of Frederick Collins from same case, on pages 37–42, inclusive; also statement, copy of bond and coupon, on pages 42, 43, and 44 of same case; also evidence of Talmadge Delafield, including documents referred to therein, on pages 30–37, inclusive, and pages 55 and 56. The same objections are noted to such evidence as are noted in said printed case.

Also deposition of Darius Hall, marked U. S. circuit court, Town of Lansing *vs.* Lytle, Ex. "J," J. M. B.

Objected to on the grounds that no evidence is introduced to show that witness is so infirm as not to be able to appear and be examined. The question in the deposition, "Were any seals put
72 on the bonds opposite the names of the commissioners at the time the bonds were signed?" is objected to as immaterial, and the following questions in said deposition on the same subject are objected to on the same grounds.

Mr. Howland read in evidence the testimony of John T. Knettles, on page 53, in the printed case of Breckenridge *vs.* Town of Lansing; also statement of judgment in case of Stuart *vs.* Lansing, as found on pages 53 and 54, in printed case of Breckenridge *vs.* Lansing.

Objected to on the ground that an adjudication in an action on one set of coupons attached to bonds is not material or conclusive in these actions, and that there is nothing in the adjudication in the judgment-roll offered in evidence that adjudges anything in relation to bonds and coupons in question in these suits.

Mr. Howland read in evidence Dr. Tarbell's testimony, on pages 52 and 53, in printed case of Breckenridge *vs.* Town of Lansing.

Counsel for John T. Lytle objected to evidence of the fact that in the registration of the bonds there is no entry of a seal being on the original bonds, on the ground that the same is incompetent and irrelevant.

Mr. Howland read in evidence the indemnity bond in Delafield's testimony above referred to.

Evidence on the part of the Town of Lansing was here closed.

73 EXHIBITS.

("EXHIBIT B.")

Stipulation.

THE TOWN OF LANSING, Plaintiff,
against
JOHN T. LYTLE, Defendant.

It is hereby stipulated and agreed by the respective parties and their attorneys in this action that upon the taking of testimony in

this case either party to this action may put in evidence from the printed case and exceptions in the action of George W. Breckenridge, plaintiff, against The Town of Lansing, defendant, in the United States circuit court, any of the following evidence, to wit: The record of the proceedings before the county judge of Tompkins county for the purpose of authorizing the issue of bonds of the town of Lansing; the statement of Elliott, Collins & Co., referred to in the testimony of Talmadge Delafield; the draft of Delafield, treasurer, upon Elliott, Collins & Co., referred to in the same testimony; the bond signed by Henry Wells and others, referred to in the same testimony; the record of abstract of record upon the writ of certiorari granted March 27, 1871; the judgment-roll in the action between John J. Stewart and the town of Lansing or an abstract thereof, such judgment being entered December 19, 1878; also the writ of error and mandate of affirmance thereof, filed June 30, 1882; the judgment-roll in another action between the same parties in which judgment was entered July 11, 1876, or an abstract thereof, and also the testimony therein of Alonzo H. Clarke, Frederick Collins, James R. Cox, Talmadge Delafield, Darius Hall, A. W. Knettles, and Dr. Tarball; and either party may also read in evidence on the
74 trial of this action the depositions of John T. Lytle and George W. Breckenridge, taken in the suit of John T. Lytle, plaintiff, against The Town of Lansing, in the United States circuit court, before Charles F. Halsted, notary public, in May, 1887, and the same may be read from the original depositions or from copies of the same furnished and sent to the attorney for the town of Lansing by the attorneys for the said Lytle; and the said documentary evidence, testimony of witnesses, and depositions or any part of the same shall be subject to such objections, except as to form, as may be taken on the trial, and said evidence shall have the same force and effect as if the said witnesses were personally produced, sworn, and examined.

Dated February 27, 1888.

HOWLAND & WHEELER,
Plaintiff's Attorneys.
SHEARMAN & STERLING, *Def't's Att'ys.*

EXHIBIT C.

Order Opening Default.

At the special term of the supreme court held in the village of Ithaca, N. Y., on the 19th day of October, 1887.

Present: Hon. Douglass Boardman, justice.

THE TOWN OF LANSING
vs.
JOHN T. LYTLE.

The defendant having made a motion herein on an order to show cause, made by C. Donohue, justice of the supreme court, "why the judgment entered herein by default on the 13th day of

July, 1887, should not be vacated and set aside with costs, and why the defendant should not be allowed to appear and serve an
75 answer to the complaint herein and defend the said action, and why the defendant should not have such other and further relief as may be just," and said motion having been made at the term aforesaid upon the affidavits of the defendant and John A. Garver, verified Oct. 12th, 1887, and upon all the pleadings herein, and the affidavit of Horace V. Howland and the judgment-roll and judgment in said action, filed and entered in the Tompkins county clerk's office on or about July 13th, 1887, being read on the part of the plaintiff in opposition to said motion, and after hearing Mr. Everett P. Wheeler, of counsel for the defendant, in support of said motion, and Mr. H. V. Howland, of counsel for the plaintiff, opposed to said motion, the said motion is granted and is so ordered to this extent only, viz: The default is opened and the defendant is permitted to come in and answer within twenty days; the judgment, however, to stand and the injunction therein contained or heretofore granted against any transfer of the bonds or coupons in suit until the final determination of this action; and such relief is granted upon the following terms and conditions, viz:

The defendant in this action shall stay all proceedings in the action now pending in the U. S. court, and shall make and serve a written stipulation on plaintiff's attorneys not to prosecute further said action or to bring any new action upon said bonds or said coupons or any of them until the final determination of this action; and the defendant shall also, within twenty days and before answering, pay to plaintiff's attorneys the sum of two hundred and forty-three dollars for the cost and expenses attending the obtaining of the judgment now sought to be set aside or opened for defence and for the costs and disbursements of the plaintiff in proving his cause of action and entering judgment in this action; and defendant shall also, within the same time, pay plaintiff's attorney ten dollars costs in opposing this motion; and if such terms and conditions are not complied with within twenty days, the defendant's motion is denied, with ten dollars costs.

76 The foregoing order settled by the undersigned, the justice before whom the motion was made, and ordered filed and entered in Tompkins county clerk's office Dec. 10th, 1887.

D. BOARDMAN,
Justice Supreme Court.

The expenses are allowed on authority of 85 N. Y., 479.

D. B.

(Ex's D and E.)

Stipulations.

Supreme Court.

THE TOWN OF LANSING
against
JOHN T. LYTLE.

Pursuant to the order made herein dated October 19, 1887, and settled December 10, 1887, it is hereby stipulated that the plaintiff will not prosecute further the action of John T. Lytle against The Town of Lansing, now pending in the United States circuit court for the northern district of New York, and will not bring any new action upon the bonds or coupons referred to in the complaint or any of them until the final determination of this action.

New York, December 31, 1887.

JOHN T. LYTLE,
By SHEARMAN & STERLING, *Attorneys.*

77 Supreme Court.

TOWN OF LANSING
vs.
JOHN T. LYTLE.

The stipulation directed by the order dated October 19th, 1887, having been this day duly served, and the costs therein specified having been this day duly paid, and a petition and bond for the removal of this cause into the United States circuit court for the northern district of New York having been filed with the clerk of the county of Tompkins on December 30th, 1887, it is stipulated that the filing of the said petition and bond be regarded as having the same force and effect as if the stipulation above referred to had been served and the said costs paid prior to the date of such filing, and the defendant shall not be required to file any additional petition or bond for the purposes of the said removal.

Auburn, N. Y., January 4, 1888.

HOWLAND & WHEELER,
Plaintiff's Attorneys.
SHEARMAN & STERLING,
Defendant's Attorneys.

78 (Ex. G.)

Petitions, Proceedings, and Judgment-Roll of Tompkins County Court.

To the Hon. M. Van Valkenburg, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of

Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

79 That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same, passed April 2d, 1850, so as to permit municipal corporations, &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869)."

And in furtherance of the objects of said act we have hereunto signed our names at the said town of Lansing.

Name.	Property taxed.
Samuel P. Mintern.	

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names, at the said town of Lansing, September 28th, 1870.

80

Names.	Property taxed.	Names.	Property taxed.
Geo. H. Warner.		R. J. Drake.	
W. Stout.		H. S. Blakley.	
Lewis De Camp.		George Davis.	
Mervin Bower.		Elihu A. Lester.	
Hanford Smith.		Henry Smith.	
Isaac L. Smith.		Harrison Teeter.	
John Bower.		John Davis.	
John W. Hamilton.		J. B. Seller.	
James Hammon.		David J. Dickerson.	
Almon Gulpue.		S. W. Stout.	
Charles Baker.		H. Doolittle.	
Arthur Hamilton.		Samuel S. Smith.	
Harvey Teter, Jr.		Josiah Todd.	
David Tuthill.		S. Davis.	

Names.	Property taxed.	Names.	Property taxed.
I. Davis.		Fred. D. Voorhees.	
E. O. Smith.		David Crocker.	
Abel Fletcher.		Leroy Swartwood.	
Henry Blakely.		J. F. Baker.	
Loretta I. Smith.		Matilda Bloom.	
Kate Bower (the Bower est.).		Mary T. Fletcher.	
A. J. Davis.		Sarah Smith.	
Sarah Davis.		Phebe Davis.	
L. H. Murray.		Casper, Fenner & Co.	
Lewis Patchen.		Eliza Bower.	
William A. Haskin.		S. P. Minturn.	

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Com-
81 pany," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names, at the said town of Lansing, Sept. 28th, 1870.

Names.	Property taxed.	Names.	Property taxed.
John D. Dates.		his William x Marr. mark.	
his Jacob x Brissy. mark.		John W. Smith.	
Albert Baker.		Thomas Lobdell.	
his Thomas x Gibins. mark.		Jeremiah Barnes.	
Harrison Williams.		Theodore T. Jefferson.	
Horatio N. Ludlow.		Henry E. Field.	
Elizabeth Ludlow.		George W. Morey.	
Anthony Riper.		S. M. Gregory.	
A. Smith.		Harrison Bower.	
Noah Grant.		Ezra Bower.	
Jacob Sweezy.		Charles Bower.	
Hiram S. Holden.		Hannah C. Stout.	
J. W. Pratt.		Delos Hopkins.	
Smith Holden.		Darius Hall.	

Names.	Property taxed.	Names.	Property taxed.
Joel Baker.		Sarah A. Dean.	
Franklin B. Rice.		H. B. Dean.	
her Catharine x Marr. mark.		Willard Austin.	
J. B. Davis.		Reuben C. Bauth.	
C. A. Haskin.		E. S. Baker.	
David Cannavan.		H. I. Haskin.	
David Bickal.		David Reynolds.	
W. S. Baker.		W. W. Clark.	
H. W. Merritt.		John Corwin.	
Philander Bickal.		Henry Bower.	
Thadeus Drake.		Francis Drake.	
82 Richard Teter.		Mary L. Baker.	
Philip Alguard.		Philinda De Camp.	
Austin Wooley.		Henry Bunnell.	
Warren Seeley.		Adelaid C. Chittenden.	
Maria T. Birmingham.		Frank Crocker.	
Rufus H. Smith.		Thomas Massott.	
G. N. Taylor, by order S. O. Azure.			

To the Hon. M. Van Valkenburgh, county judge of Tompkins Co., N. Y.:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars and to invest the same or the proceeds thereof in the stock or bonds, or both, of the "Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of N. Y. entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names, at the said town of Lansing, September 28th, 1870.

David Crocker.	William Judge.
Lockwood Ferris.	A. L. Palmer.
her Catharine x Hilliard. mark.	Isaac Hilliard.
F. A. Perry, Jr.	Philip Algart.
Mrs. N. T. Allen.	Henry Blakeslee.
Eliza Bower.	Wm. P. Baker.
Lewis H. Murray.	Martin Murphy.
C. A. & L. P. Minturn.	A. L. P. (balance not readable).

83 To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names, at the said town of Lansing, September 28th, 1870.

Names.	Property taxed.	Names.	Property taxed.
C. P. Farlin.		E. S. Miller.	
John Beard.		George H. Mitchell.	
John W. Mack.		D. T. Barr.	
Amasa Wood.		H. D. Cutter.	
H. J. B. Labar.		P. S. Smith.	
Samuel Mory.		Charles Morey.	
Alexander Brown.		Albert Slocum.	
Jefferson Brookes.		John C. Brown.	
Bloom Labar.		John Stark.	
A. S. Jacobs.		Marcus A. Blakely.	
G. L. Bower.		D. H. Thayer.	
S. S. Todd.		Smith Norton.	
Anson Howser.		Oscar Hamilton.	
George V. Benjamin, S. M.		Calvin Sweazy, S. M.	
Mrs. Jane Hian, L. M. Henry Myers.		Edwin Bush, L. M., on Hibbard's.	
84 Laura Bascom, L. M. Henry Turner.		Edmund Woolley, L. M.	
		M. E. Sperry.	
Richard Jehu.		Amelia Wood.	
Mrs. C. T. Cook.		S. A. Baker, by auth'y writ'n.	
Wm. A. Van Auken, by authority.		Chas. Le Shergour, by request.	
		Sally L. Wood, by request.	

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thou-

sand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names at the said town of Lansing.

Names.	Property taxed.	Names.	Property taxed.
John F. Burdick.		Martin O. Farrell.	
John W. Gibbs.		A. H. McKinney.	
Robert Bush.		Benj. Campbell.	
Peter Bush.		Henry Ervay,	
Maria Bush,		By J. F. B.	
By J. F. B.		Charles B. Bush,	
L. B. Arnold.		By J. F. B.	
Richard Brown.		Sam'l Brown.	
J. M. Woodbury.		A. W. Knettles.	
M. M. Kentz,		Geo. Drake.	
H. F. H.		Mrs. Bloom,	
S. I. Goodwin.		H. F. H.	
85 Mary J. Townley.		F. S. Emmons.	
Luther Hedden.		Frank Marcelle.	
Miles A. Morgan,		R. T. Hedden.	
A. W. K.		J. M. Hedden.	
R. C. Wilkins.		J. T. Knettles.	
R. L. Goodwin.		J. E. Minier.	
Norton, Morrison, storehouse.		C. H. North,	
William Austin,		By A. W. Knettles.	
A. W. K.			

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations," &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names at the said town of Lansing.

Names.	Property taxed.	Names.	Property taxed.
J. H. Conrad.		W. J. Genung.	
M. C. Platt.		L. D. Swart.	
C. A. Swart.		J. L. Seeber.	

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

86 That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names, at the said town of Lansing, Sept. 28th, 1870.

Name.	Property taxed.	Name.	Property taxed.
James A. Burr, L. M.		David McCormick, L. M.	
Jesse Havens.		A. J. Sperry.	
F. C. Sperry.		John Moe.	
L. F. Jennings.		D. C. Haring.	
J. C. Beebe.		A. H. Clark.	
Edwin S. Smith.		Houtetor Bower.	
Otis Bachelor.		C. G. Benjamin.	
H. M. Olmsted.		J. N. Wildman.	
John Ervay.		William N. Burger.	
Ruth L. Holden.		Hyram Scott.	
T. Robertson, A. B.		Milton Bower, A. B.	
Henry Bower.		A. A. Walker.	
Patience Woolley.		Francis M. Wager.	
William Overacker.		S. Van Patten.	
S. T. Benjamin.		Ann Brown.	
J. R. Mitchell.		Marion Howell.	
C. T. Howell.		Sarah Mitchell.	
Abner Pressey.		Mrs. Nelson.	
Mortimer M. Bristol.		Mosher Weaver.	
G. D. Crittenden.		Josiah Emmons.	
Nathaniel X. Schooley.		Susan Terry.	
Maggie C. Benjamin.		Abigal Van Auken.	
Patience Woolley, guardian.		Fanny Dewitt.	
Reid W. Townley.			

87 To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And, in furtherance of the objects of said act, we have hereunto signed our names, at the said town of Lansing, September 28th, 1870.

Names.	Property taxed.	Names.	Property taxed.
Sarah Bickal.		Henry Mallory.	
Elizabeth Austin.		J. A. French.	
Cornelius Seamon.		William A. Dean.	
Edwin Bower.		George F. Allen.	
A. C. Bower.		Newton Brown.	
S. S. Drake.		L. Beckwith.	
James Smith.		A. D. Brown.	
Thomas Sweazy.		Stephen W. Clark.	
William Sweasey, By W. Seely.		I. H. Howel.	

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the
88 town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names, at the said town of Lansing, September 28th, 1870.

Names.	Property taxed.	Names.	Property taxed.
Wesley De Camp.		Martin his x mark Murphy.	
Daniel Hockman.		Ann M. Bysher.	
Marilla Bower.		Theo. L. Swayse.	

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

89 And in furtherance of the objects of said act we have hereunto signed our names, at the said town of Lansing, September 28th, 1870.

Names.	Property taxed.	Names.	Property taxed.
Susan Bush.		Margaret Labar, W. B.	
E. K. Bogardus.		Jane B. Bogardus.	
Arieta Bogardus.		Daniel O. Manning.	
Lydia Brown.		George W. Drake.	
Wilson D. Williams, exe'r.		Samuel Robinson.	
John Collins.		Benjamin Brown.	
Richard H. Brown.		Henry B. Welch.	

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations, and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names at the said town of Lansing.

Names.	Property taxed.	Names.	Property taxed.
Jerome Grinnell.		Charles M. Tichenor.	
John Tichenor.		C. & J. Tichenor.	
Jonathan Norton.		Norton & Morrison in Co. warehouse.	
S. M. Morrison.			

90 To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of the "Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names at the said town of Lansing.

Names.	Property taxed.	Names.	Property taxed.
John Bloom.		B. M. Hagin.	
J. M. McKinney.		Jos. Head,	
A. C. Ives.		By B. M. Hagin.	
Patrick Conley.		C. S. Minier.	
Marcy A. Hagin,		Henry Hays.	
By B. M. Hagin.		M. F. Bloom.	
R. Head.		Zimri Morris.	
J. D. Egbert.		Sally Teeter.	
G. O. Drake.		H. W. Collins.	
Thomas Quinn.		G. W. Mineah.	
Geo. W. Miller,		Andrew M. Shurger.	
By B. M. Hagin.		Charles B. Humphrey.	
Simon Bloom,		S. B. Field.	
By B. M. Hagin.		Vincent Teeter.	

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

91 The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing

shall create and issue its bonds to the amount of seventy-five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names, at the said town of Lansing, Sept. 28th, 1870.

Names.	Property taxed.	Names.	Property taxed.
Welcome Burger.		Robert Fanner.	
Joshua Bower.		Lorenzo D. Ives.	
A. W. Smith.		John H. Bailey.	
S. B. Newton.		Abram Bower.	
Hiram B. Perry.		Betsey Nyhart.	
Jerusha Bradley.		E. C. Stuart.	
Isaac Brown.		Silas K. Newton.	
Solomon Price.		Joseph Shurger.	
D. S. Loucks.		William Loucks.	

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-
92 five thousand dollars, and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names at the said town of Lansing.

Names.	Property taxed.	Names.	Property taxed.
Edwin Bush,		Moses Reeves.	
J. Bruyn Bogardus.		George W. Teeter.	
his		his	
Michael x Hunt,		Dan'l x Pelham,	
mark.		mark.	
H. F. Hibbard, witness.		H. F. Hibbard, witness.	
Eliza A. Bryant.		Mary J. Loomis,	
Henry Bloom,		By H. F. Hibbard.	
By G. W. Teeter.		William Mead.	

Names.	Property taxed.	Names.	Property taxed.
A. S. Knettles.		Wm. B. Williams.	
E. Osmun.		Lewis E. Bloom.	
Israel Luce.		James Luce,	
Wm. Mead,		P'r H. F. Hibbard.	
J. A. Burr & Co.		Ebne'r Lobdell,	
Nelson E. Lyon,		By H. F. Hibbard.	
J. A. Burr & Co.		John Wesley Bloom.	
B. B. Gibbs, authoritative by letter H. F. Hibbard.		Charles Mallory,	
		P'r H. F. Hibbard.	
Andrew B. Bogardus.		Maggie McKinney,	
Evart Bogardus.		By A. H. McKinney.	
Wm. A. McKinney.		A. B. Van Auken.	
John Terwilliger.			
C. A. Haskin, executor.			

To the Hon. M. Van Valkenburgh, county judge of Tompkins county:

The petition of the undersigned, residents and others, and whose names appear upon the tax-list and assessment-roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows—

93 That the said petitioners desire that the said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars and to invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, so as to permit municipal corporations, &c., &c., &c., passed May 18th, 1869 (chap. 907 of Laws of 1869).

And in furtherance of the objects of said act we have hereunto signed our names, at the said town of Lansing, Sept. 28th, 1870.

Names.	Property taxed.	Names.	Property taxed.
Casper Fenner.		Luther Green.	
William Wilson.		I. A. Perry.	
D. T. Wilson.		Reubin Harvey.	
Arad Buchanan.		Barnney Fenner.	
H. Hedden.		C. A. Minturn.	
Fred Storm.		Eli Woolley.	
John J. Kenyon.		Mrs. J. Campbell.	
Sally Davis.		William Davis.	
Chloe M. Mitchell.		Ellen Drake.	
J. H. Willing.		David Townley.	
Sarah Mitchell.		E. J. Barnes.	
W. A. Hedden.		Loesa Hedden.	
David Patchen.		Elijah Bucanan.	

Names.	Property taxed.	Names.	Property taxed.
Samuel Benjamin.		Rachel Merritt.	
Mary X. Dickerson,		Margaret D. Allen.	
D. McCormick.		James A. Burr.	

STATE OF NEW YORK, *Tompkins County,* } ss:

James A. Burr, of the town — Lansing, in the county of Tompkins and State of New York, being first duly sworn, doth depose and say that he is a tax-payer, residing in said town of Lansing, in said county of Tompkins; that the name of this deponent
94 appears upon the last preceding tax-list or assessment-roll of said town of Lansing as an owner of taxable property in the corporate limits of said town of Lansing; that he is one of the petitioners to the petition hereto annexed; that he subscribed his name to said petition as one of said petitioners for the purposes therein set forth; that he has read the said petition hereto annexed and knows the contents thereof, and that the same is true of his own knowledge and contains the names as petitioners therein of a majority of the tax-payers of said town of Lansing whose names appear upon the last preceding tax-list or assessment-roll of said town of Lansing as owning or representing a majority of the taxable property in the corporate limits of said town of Lansing.

JAS. A. BURR.

Subscribed and sworn to before me this 10th day of December, 1870.

CH'S G. DAY,
Justice Peace.

(Endorsed:) Tompkins county. In the matter of the town of Lansing and the Cayuga Lake Railroad Company, &c., &c. Petition. "A." Filed Dec. 10, 1870.

COUNTY OF TOMPKINS:

In the Matter of the Petition of JAMES A. BURR and Others, tax-payers of the town of Lansing, Tompkins county, N. Y., setting forth that they are a majority of the tax-payers and represent a majority of the taxable property of the town and desire that said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars and invest the same or the proceeds thereof in the stock or bonds, or both, of the Cayuga Lake Railroad Company.

Before Hon. M. Van Valkenburgh, county judge of Tompkins county, at his office, in Ithaca, in said county, on the 10th day of December, 1870.

95 On reading and filing the petition of James A. Burr and others, setting forth, among other things, that the said petitioners constitute a majority of the tax-payers of the town of Lan-

sing, Tompkins county, New York, whose names appear upon the last preceding tax-list or assessment-roll of said town of Lansing as owning or representing a majority of the taxable property in the corporate limits of said town, and that said petitioners desire that the said town of Lansing shall create and issue the bonds of said town to the amount of seventy-five thousand dollars and invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," and that such proceedings may be had as are prescribed by an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850," passed May 18th, 1869 (chap. 907 of Laws of 1869), which said petition is duly verified by James A. Burr, one of said petitioners—

On motion of Marcus Lyon, Esq., attorney for said petitioners, it is ordered that a notice be forthwith published in "The Ithaca Journal," a newspaper published in the village of Ithaca, in said county of Tompkins, directed "To whom it may concern," setting forth that on the 24th day of December, 1870, at 10 o'clock in the forenoon of that day, at the office of the county judge of Tompkins county, in the village of Ithaca, in said county, he, the said county judge, will proceed to take proof of the allegations in said petition and of the facts therein set forth as to the number of tax-payers joining in said petition and as to the amount of taxable property represented by them and of such other facts as may properly be inquired into under the provisions of the aforesaid act and amendments thereof and under the provisions of law in such case made and provided.

Dated Dec. 10, 1870.

M. VAN VALKENBURGH,
Tompkins Co. Judge.

96 (Endorsed:) Tompkins county. In the matter of the petition of James A. Burr & others, tax-payers of the town of Lansing, &c., to "The Cayuga Lake Railroad Company," &c., &c. Order. Lyon & Donnelly, att'ys. Filed, Tompkins county clerk's office, Ithaca, N. Y., Dec. 12, 1870.

The Ithaca Journal.

A first-class weekly newspaper,

At only $2.00 per year.

Plain and fancy book and job printing "C" neatly and promptly executed.

STATE OF NEW YORK, *Tompkins County,* } ss:

Wesley Hooker, being duly sworn, deposes and says that he resides in Ithaca, county and State aforesaid, and that he is the business manager of "The Ithaca Journal," a public newspaper printed

and published in Ithaca aforesaid, and that a notice, of which the annexed is a true copy, was published in said paper once in each week for two successive weeks, and that the first publication of said notice was on the 13th day of December, 1870.

WESLEY HOOKER.

Subscribed and sworn before me this 16th day of January, 1871.

M. VAN VALKENBURGH,
County Judge.

To whom it may concern:

A petition, signed by James A. Burr and others and duly
97 verified by one of the petitioners, having this day been presented to the undersigned, which said petition set forth, among other things, that the said petitioners constitute a majority of the tax-payers of the town of Lansing, Tompkins county, N. Y., whose names appear upon the last preceding tax-list or assessment-roll of said town of Lansing as owning or representing a majority of the taxable property in the corporate limits of said town; that said petitioners desire that the said town of Lansing shall create and issue the bonds of said town to the amount of seventy-five thousand dollars and invest said bonds or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," a railroad corporation in the State of New York, and also desiring that such proceedings may be had as are prescribed by chapter 140 of the Laws of the State of New York, passed April 2d, 1850, and entitled "An act to authorize the formation of 'railroad corporations' and to regulate the same," and an act passed May 18th, 1869, amending the same, "so as to permit municipal corporations to aid in the construction of railroads," and acts amendatory of the same: Now, therefore, pursuant to an order this day duly made by the undersigned as county judge of Tompkins county upon presentation of said petition, notice is hereby given that the undersigned, as such county judge, will, on the 24th day of December, 1870, at 10 o'clock in the forenoon of that day, at his office, in Ithaca, in said county, proceed to take proof of the allegations in said petition and of the facts therein set forth as to the number of tax-payers joining in said petition and as to the amount of taxable property represented by them, and of such other facts as may properly be inquired into under the provisions of the aforesaid acts and the amendments thereof.

Dated December 10th, 1870.

M. VAN VALKENBURGH,
Tompkins County Judge.

98 In the Matter of the Petition of JAMES A. BURR and Others in Relation to Bonding the Town of Lansing in Aid of the Cayuga Lake R. R. Company.

To Hon. M. Van Valkenburgh, county judge of the county of Tompkins:

The petition of Roswell Beardsley, Egbert Williams, Daniel L. Bacon, Myron Halliday, Jacob S. Linderman, and Abraham H. Tarbell respectfully shows—

That your petitioners are residents and tax-payers of the town of Lansing, in the county of Tompkins, and freeholders of said town, whose names appear on the last assessment-roll of said town, and that they, in their own behalf and in behalf of all other tax-payers of said town who may be interested, desire to contest and oppose the granting of power to said town of Lansing to create and issue its bonds in aid of the Cayuga Lake Railroad Company, which has been petitioned for by James A. Burr & others and which petition they are advised by notice in a newspaper has been presented to the judge above named and proofs thereon are to be taken this day.

And your petitioners aver that they are informed and believe that said petition is itself informal and irregular in that it does not specify in the manner required by law how the petitioners desire said bonds to be invested. They further aver that one or more of the persons named in said petition were not named in the last preceding tax-list or assessment-roll of said town and did not own taxable property in said town when said petition was signed.

They further aver that a considerable number of the names appearing upon said petition were obtained by false and fraudulent representations, and that the persons whose names were so
99 obtained were not then and are not now desirous of bonding said town for said road; that none of your petitioners have seen the petition aforesaid until said 10 o'clock of this day, and they are informed that all the names claimed to be thereon have not yet been shown them, and that at least three weeks' time will be needed by them to obtain and produce before the judge the proofs of the principal matters herein set forth; and they pray the order of the judge of Tompkins county that this proceeding may be adjourned to give them time for such proceedings to get testimony, and that they have leave to amend their allegations against the validity of said petition and proceedings as they may be advised shall be necessary, and they ask the process of this court to compel the attendance of witnesses.

Dated Dec. 24th, 1870.

ROSWELL BEARDSLEY.
EGBERT WILLIAMS.
D. L. BACON.
JACOB S. LINDERMAN.
ABRAM H. TARBELL.

TOMPKINS COUNTY, *ss:*

Roswell Beardsley, Egbert Williams, Daniel L. Bacon, Jacob S. Linderman, & Abraham H. Tarbell, the petitioners above named, being severally duly sworn, each for himself says he has heard the foregoing petition read and knows the contents thereof, and that the same is true of his own knowledge except the matters therein stated on information and belief, and as to those matters he believes it to be true.

ROSWELL BEARDSLEY.
EGBERT WILLIAMS.
D. L. BACON.
ABRAM H. TARBELL.
J. S. LINDERMAN.

Sworn and subscribed before me Dec. 24th, 1870.
BENJ. G. FERRIS, *N. Public.*

Dec. 24, 1870.

100 COUNTY OF TOMPKINS:

In the Matter of the Petition of JAMES A. BURR and Others, tax-payers of the town of Lansing, Tompkins county, N. Y., setting forth that they desire that said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars and invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," &c.

Before Hon. M. Van Valkenburg, county judge of the county of Tompkins, at his office, in the village of Ithaca, in said county, this the 20th day of March, in the year 1871.

The petition of James A. Burr and others, tax-payers of the town of Lansing, Tompkins county, New York, having been presented to me, the county judge of Tompkins county, on the 10th day of December, 1870, which petition sets forth and alleges, among other things, that the names of said petitioners appear upon the tax-list and assessment-roll of said town of Lansing as owning or representing certain taxable property in the corporate limits of said town, and that said petitioners desire that said town of Lansing shall create and issue its bonds to the amount of seventy-five thousand dollars and invest the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company;" also that such proceedings might be had as are prescribed by an act of the legislature of the State of New York entitled "An act to amend an act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, so as to permit municipal corporations to aid in the construction of railroads," passed May 18th, 1869 (chapter 907 of the Laws of 1869), which said petition was duly verified;

And I, the said county judge, upon the presentation to me of said petition duly verified, and upon motion of Marcus Lyon, Esq.,

attorney for said petitioners, having made an order on said
101 10th day of December, 1870, that a notice be forthwith published in "The Ithaca Journal," a newspaper published in the village of Ithaca, in said county of Tompkins, directed "to whom it may concern," setting forth that on the 24th day of December, 1870, at 10 o'clock in the forenoon of that day, at the office of the county judge of Tompkins county, in the village of Ithaca, I, the said county judge, would proceed to take proof of the allegations in said petition, and as to the number of tax-payers joining in said petition, and as to the amount of taxable property represented by them, and of such other facts as might be properly inquired into under the provisions of the aforesaid act or acts;

And I, the said county judge, at the time and place named in the said notice, to wit, on said 24th day of December, 1870, and at the office of said county judge, in Ithaca, and on such other days subsequent to said 24th December, 1870, as the proceedings in this matter were from time to time adjourned, having taken due proof of the due publication of said notice, as required by said order, as well by the examination upon oath before me of the business manager of the said "The Ithaca Journal" as by the affidavit of said publication hereto annexed, and having upon the various days, from time to time during the hearing of this matter, taken due proof of the signing and execution of said petition by the petitioners whose names are signed thereto, and that said petitioners were tax-payers of said town of Lansing, as shown by the last preceding tax-list or assessment-roll of said town, and that said petitioners do constitute and represent a majority of said tax-payers as so shown upon said last preceding tax-list or assessment-roll, and do represent a majority of the taxable property upon said last preceding tax-list or assessment-roll, and having been attended by the said James A. Burr and others of said petitioners, with their counsel, and by Roswell Beardsley and others, tax-payers of said town of Lansing, with their counsel, in opposition to the prayer of said petitioners, and having proceeded to take full proof as to the allegations of said petition,
102 and whether said petitioners are tax-payers of said town of Lansing whose names appear upon said last preceding tax-list or assessment-roll of said Lansing, and whether they are a majority of said tax-payers, and whether they do represent a majority of the taxable property in the corporate limits of said town of Lansing, as appears by the said last preceding tax-list or assessment-roll, and having examined into said proofs and allegations and duly deliberated thereon:

Now, on motion of Marcus Lyon, attorney for said petitioners, I, the said county judge of Tompkins county, do now adjudge and determine that said petition was duly signed and executed by the petitioners whose names appear upon the same as petitioners thereto; that said petitioners are tax-payers of said town of Lansing, as appears by the last preceding tax-list or assessment-roll of said town of Lansing; that said petitioners do constitute and represent a majority of the tax-payers of said town of Lansing, as shown by the last preceding tax-list or assessment-roll of said town, and that said

petitioners do represent a majority of the taxable property upon said last preceding tax list or assessment-roll.

And I, the said county judge of Tompkins county, do further adjudge and determine that the sum of seventy-five thousand dollars mentioned in said petition does not exceed twenty per cent. of the whole taxable property of said town of Lansing, as shown by the last preceding tax-list or assessment-roll of said town, and that all the requirements of law respecting the creation and issuing of the bonds of said town of Lansing to the amount of seventy-five thousand dollars for investment of the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company" have been fully complied with by said petitioners.

And I, the said county judge, do further adjudge and determine that it is expedient and proper that three persons who are freeholders, residents, and tax-payers within the corporate limits of
103 said town of Lansing be appointed and commissioned as commissioners for the purposes specified and contemplated in said petition; that John T. Knettles, Darius Hall, and Alonzo H. Clark are freeholders, residents, and tax-payers within the corporate limits of said town of Lansing, and are suitable and proper persons to be appointed and commissioned as such commissioners; and I, the said county judge, do appoint and commission the said John T. Knettles, Darius Hall, and Alonzo H. Clark as commissioners, whose duty it shall be, with all convenient dispatch, to cause to be made and executed the bonds of said town of Lansing to the amount and for the purposes set forth in said petition; and whose further duty it shall be to discharge all such further and other duties as shall by law be required of them as such commissioners.

MILLS VAN VALKENBURGH,
Tompkins Co. Judge.

(Endorsed:) 2. Misc. records. Tompkins county. The Cayuga Lake Railroad Company. Petition, proceedings, and judgment record in the matter of bonding the town of Lansing in aid of the Cayuga Lake railroad. Lyon & Donnelly, att'ys for petitioners. Filed Tompkins county clerk's office March 21st, 1871, at 12 m. D. Tarbell, clerk. Ch'g'd; all entered.

TOMPKINS COUNTY, *ss:*

Recorded March 21st, 1873, at 12 o'clock m., in Liber No. 3 of Miscellaneous Records, at page 99, and examined.

O. P. HYDE,
Dept. Clerk.

STATE OF NEW YORK, }
Tompkins County Clerk's Office, } *ss:*

I, Philip J. Partenheimer, clerk of said county, do certify that I have compared the foregoing with the original petition on
104 file in said office, and do certify that it is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and affixed the official seal of said county, at Ithaca, this 13th day of June, A. D. 1887.

P. J. PARTENHEIMER, *Clerk.*

TOMPKINS COUNTY, *ss:*

Roswell Beardsley and Egbert Williams, being severally duly sworn, each for himself deposes and says he is a resident, freeholder, and tax-payer of the town of Lansing, in the county of Tompkins; that on or about December 10th, 1870, James A. Burr and others presented or caused to be presented to the county judge of Tompkins county a petition, verified by said Burr, purporting and claiming to be pursuant to the provisions of the laws of the State of New York permitting municipal corporations to aid in the construction of railroads (to wit, Laws of 1869, chap. 907, & acts amendatory thereof), which petition represented, among other things, in substance that the persons whose names were thereto subscribed were a majority of the tax-payers of the town of Lansing aforesaid whose names appeared upon the last tax-list & assessment-roll of said town as owning or representing a majority of the taxable property within the corporate limits of said town, and that they desired that said town should, pursuant to the provisions of the laws aforesaid, create & is-ue its bonds to the amount of $75,000 & invest the same or the proceeds thereof in the stock or bonds, or both, of the Cayuga Lake Railroad Company; that thereupon such proceedings were had by & before said county judge that an order was made & published, purporting to be in conformity with the provisions of said laws, in substance and to the effect that on the 24th day of December then inst. said judge would take proof of the facts stated in said petition at his office, in Ithaca, on
105 which day these deponents and Jacob S. Linderman, Daniel L. Bacon, and Abram H. Tarbell appeared before said judge and by their petition in writing, duly verified, traversed the matters alleged in said petition or some of them & alleged, among other things, that said petition was on its face irregular and insufficient in that it did not specify the manner in which the peti-oners desired the proceeds of the proposed bonds to be invested; and further allege that a considerable number of the signatures to said petition were procured by false and fraudulent pretences, & that the persons whose names were so obtained were not when they signed said petition or at the time of said hearing desirous that said town should be so bonded; that afterwards & pending said hearing said allegations were amended by adding thereto the statement, in substance, that no such corporation as the Cayuga Lake R. R. Company had any legal existence & therefore said petition ought not to be granted, and, further, that the persons who signed said petition, or a large number of them, signed the same on the representation & in the belief that said railroad was a legal & valid corporation, that its road was, by its article of association, to run through said town on the lake shore east side, whereas in fact such belief & representation were unfounded, in this, that said road might, under its articles of association, if the same

were valid, pass on the opposite or west shore of said lake; that said county judge then and afterwards, from time to time, proceeded to take the proofs offered by the petitioners aforesaid, & did, on or about March 20th, 1871, decide and adjudge, among other things, in substance that the said petitioners were a majority of the tax-payers of said town whose names appeared on the last tax-list of said town as representing a majority of the taxable property thereof; that said petition was duly signed by the persons whose names appear thereon; that $75,000 does not exceed 20 per cent. of the taxable property of said town; that it is expedient that commissioners should be
106 appointed for the purposes specified in said petition, and appointing such commissioners, to wit, John T. Knettles, Darius Hall, & Alonzo H. Clark, declaring it to be their duty to execute bonds to the amount petitioned for with all reasonable dispatch, which decision & adjudication was in writing signed by said judge & filed in the clerk's office of Tompkins county on the 21st day of March, 1871.

And these deponents further allege & *and* say that in & by the record of said proceedings as it is made up and filed a portion of the errors complained of by deponents do not appear, as the testimony taken orally before said judge is not embodied in the record, and it does not appear that the petitioners proved the existence of any Cayuga Lake Railroad Company; that deponents caused the articles of association of said railroad company to be offered in evidence, but they were excluded after being marked for identification by the county judge; that it appears by the record that a large number of names were signed to the petition of persons not on the assessment-roll, & that a large number of said names were different from those on the tax-roll, though claimed to be identical; that the assessment-roll is not a part of the record, & deponents pray that the said judge may be required to return all the evidence taken & proceedings had before him in this matter, that the supreme court may inquire into the whole matter & see if said petition should be granted; that deponents believe the decision & judgment of the county judge were erroneous for the reasons aforesaid, to wit, because no corporation capable of receiving the proposed aid was proved to exist; because said petition did not specify how the proceeds of the town bonds should be invested; because the petitioners were not sufficiently proved or identified as tax-payers of the town and a majority thereof; because the said judge declined to receive proof that a sufficient number of said signatures to reduce the petitioners' numbers below a majority of the tax-payers were obtained by false representations as to the said road; that it was legally
107 organized to pass through Lansing, and because he declined to receive proof that said railroad was in fact organized or attempted to be organized to pass from the Central railroad to Ithaca without specifying which side of the lake or through what counties or towns it should go; also because, as will appear by the return, some of the persons who signed said petition signed it more than once & were counted some of them as many as three times.

That these deponents are informed and believe that said county

judge in making his decision on said petition made an error in counting the names on the tax-roll & petition, one or both, amounting to about one hundred names, and that a corrected count will, as they are advised, entirely change & reverse the decision of said judge.

These deponents further say that J. S. Linderman, Daniel De Camp, Daniel L. Bacon, & John H. Conklin, who are residents & tax-payers of said town of Lansing, desire to unite with deponents in this application for a writ of certiorari to remove said matter into the Supreme Court.

That said persons, as well as deponents, are directly pecuniarily interested in the matter of bonding said town, each & all of them owning property subject to taxation & which will be taxed to pay said bonds if the same be issued, and deponents pray the order of this court in conformity to the law & practice in such cases removing said matter by certiorari and requiring said judge to make return of all the matters necessary to a full understanding of his said judgment.

ROSWELL BEARDSLEY.
EGBERT WILLIAMS.

Sworn and subscribed before me March 25th, 1871.

ABEL BURRITT,
Notary Public.

108 STATE OF NEW YORK, } ss:
Tompkins County Clerk's Office, }

I, B. R. Williams, dep. clerk of said county, do certify that I have compared the foregoing with the original papers on file in said office and do certify that it is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have hereunto subscribed my name and affixed the official seal of said county, at Ithaca, this 21st day of February, A. D. 1888.

B. R. WILLIAMS, *Dp. Clerk.*

The People of the State of New York to Mills Van Valkenburgh, county judge of the county of Tompkins:

Whereas we have been informed by the complaint, of Roswell Beardsley and Egbert Williams, residents, freeholders, and tax-payers of the town of Lansing, in the county of Tompkins, that certain proceedings were lately had before you upon the petition of James A. Burr and others, claiming to be tax-payers of said town, and which petition and the subsequent proceedings thereupon purport to be in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April 2d, 1850, so as to permit municipal corporations to aid in the construction of railroads," passed May 18th, 1869, and laws amending the same, and in which proceedings you did adjudge and determine, among other things, in substance that said petitioners were a majority of tax-payers of said town whose names

appeared on the tax-list or assessment-roll as representing a majority of the taxable property thereof; that said petition was duly signed by the persons whose names appear thereon; that $75,000 does not exceed 20 per cent. of the taxable property of said town; that it is expedient that commissioners be appointed for the pur-
109 poses specified in said petition, to wit, that said town should issue its bonds in aid of the Cayuga Lake railroad in the sum of $75,000.00 and invest the same in the stock or bonds, or both, of said railroad, and appointing such commissioners, which decision and judgment were in writing, signed by you, said county judge, and entered in the county clerk's office of Tompkins county on the 21st day of March, 1871; and we, being willing for certain reasons to be certified of the said proceedings, petition, order, decision and judgment, and all things pertaining thereto, together with the evidence taken before you, do command that you certify the same, with all things appertaining thereto, unto our justices of our supreme court, at the court-house, in Elmira, on the 4th day of April next, under your seal, as fully as the same remains before you, that our said justices may cause to be done further thereupon what of right and according to law ought to be done, and have you then — there this writ.

Witness William Murray, Esq., justice of the supreme court, at the special term of the supreme court, held at the court-house, in Ithaca, in and for the county of Tompkins, this 27th day of March, 1871.

BEERS & HOWARD, *Attorneys.*

D. TARBELL,
Clerk of Tompkins County.

(Endorsed.)

110 (Ex. H.)

The People
to
Miles Van Valkenburgh, Co. Judge, &c.

Writ of Certiorari and Judgment of Supreme Court.

On application of Roswell Beardsley & Egbert Williams (by Beers & Howard, their attorneys), and on their affidavits, dated March 25th, 1871, I allow the within writ of certiorari to issue, and let said affidavits be filed in the office of the clerk of Tompkins county.

Dated March 27, 1871.

W. MURRAY, Jr.,
Justice of Supreme Court.

Tompkins County Clerk's Office.

Filed June 3, 1872, 10 a. m.

D. TARBELL, *Clerk.*

STATE OF NEW YORK, } ss:
Tompkins County Clerk's Office, }

I, Philip J. Partenheimer, clerk of said county, do certify that I have compared the foregoing with the original writ of certiorari and return on file in said office, and do certify that it is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have hereunto subscribed my name and affixed the official seal of said county, at Ithaca, this 13th day of June, A. D. 1887.

[SEAL.]

P. J. PARTENHEIMER, *Clerk.*

111 *The Return of Mills Van Valkenburgh, County Judge of Tompkins County, to the Writ of Certiorari Hereto Annexed.*

By virtue of and in obedience to the writ of certiorari hereto annexed and to me directed I do hereby certify and return to the justices of the supreme court that on the 10th day of December, 1870, the petition of James A. Burr and others, tax-payers of the town of Lansing, in said county of Tompkins, with an affidavit of verification thereto annexed, was presented to me, which petition and affidavit are hereto annexed, marked "A."

That I did thereupon, on the same day, to wit, the 10th day of December, 1870, make an order for the publication of the notice of taking the proofs of the allegations in said petition and of the facts therein set forth as to the number of tax-payers joining in said petition and as to the amount of taxable property represented by them and of such other facts as might properly be inquired into under the provisions of chapter 907 of the Laws of 1869, a copy of which order is hereto annexed, marked "B."

That I did thereupon forthwith cause to be published a notice of the time and place of the taking of such proofs, a copy of which notice, with the proof of the publication thereof, is hereto annexed, marked "C."

That at the time and place in notice specified, to wit, the 10th day of December, 1870, at 10 o'clock in the forenoon, at the office of the county judge, in Ithaca, I did proceed to take the proofs of the allegations and facts aforesaid, which proofs are hereto annexed, marked "D."

That at the taking of such proofs Marcus Lyon, Esq., appeared as counsel for the petitioners; O. G. Howard, Esq., appeared as counsel for Roswell Beardsley and others, tax-payers of the said town of Lansing, in opposition to said petition.

That after the taking of said proofs and the hearing of the argument of the respective counsels the matter was duly submitted to me and, after due deliberation, I did, on the 20th day of
112 March, 1871, make and cause to be entered on record in Tompkins county clerk's office a judgment in the matter of said petition, of which judgment a copy is hereto annexed, marked "E."

All of which I do hereby certify and return as by the annexed writ I am commanded.

In testimony whereof I have hereunto set my hand and seal this 1st day of September, 1871.

[SEAL.] MILLS VAN VALKENBURGH.

Tompkins county clerk's office, Ithaca, N. Y., January 22nd, 1872.
D. TARBELL, *Clerk.*

At a general term of the supreme court of the State of New York held in and for the third judicial department, at the court-house, in the city of Elmira, in the county of Chemung, on the seventh day of May, 1872.

Present: Hon. Theodore Miller, presiding justice; Hon. Platt Potter & Hon. John M. Parker, associate justices.

THE PEOPLE *ex Rel.* ROSWELL BEARDSLEY & Others
against
MILLS VAN VALKENBURGH, County Judge of Tompkins County.

The people of the State of New York sent to Mills Van Valkenburgh, county judge of the county of Tompkins, their writ of certiorari in these words, to wit:

The People of the State of New York to Mills Van Valkenburgh, county judge of the county of Tompkins:

Whereas we have been informed by the complaint of Roswell Beardsley and Egbert Williams, residents, freeholders, and tax-payers of the town of Lansing, in the county of Tompkins,
113 that certain proceedings were lately had before you upon the petition of James A. Burr and others, claiming to be tax-payers of said town, and which petition and the subsequent proceedings thereupon purport to be in pursuance of an act of the legislature of the State of New York entitled "An act to amend an act entitled 'An act to authorize the formation of railroad companies and to regulate the same,'" passed April 2nd, 1850, so as to permit municipal corporations to aid in the construction of railroads, passed May 18th, 1869, and laws amending the same, and in which proceedings you did adjudge and determine, among other things, in substance that said petitioners were a majority of the tax-payers of said town whose names appeared on the last tax-list or assessment-roll as representing a majority of the taxable property thereof; that said petition was duly signed by the persons whose names appear thereon; that $75,000 does not exceed 20 per cent. of the taxable property of said town; that it is expedient that commissioners be appointed for the purposes specified in said petition, to wit, that said town should issue its bonds in aid of the Cayuga Lake railroad in the sum of $75,000 and invest the same in the stock or bonds, or both, of said railroad and appointing such commissioners, which decision and judgment were in writing, signed by you, said county judge, and entered in the county clerk's office of Tompkins county on the 21st day of March, 1871; and we, being willing for certain reasons, to be certified of the said proceedings, petition, order, decision, and judgment and all things pertaining thereto, together with the evi-

dence taken before you, do command that you certify the same, with all things appertaining thereto, unto our justices of our supreme court, at the court-house, in Elmira, on the 4th day of April next, under your seal, as fully as the same remains before you, that our said justices may cause to be done further thereupon what of right and according to law ought to be done, and have you then — there this writ.

Witness William Murray, Esq., justice of the supreme
114 court, at the special term of the supreme court, held at the court-house, in Ithaca, in and for the county of Tompkins, this 27th day of March, 1871.

D. TARBELL,
Clerk of Tompkins County.
BEERS & HOWARD, *Attorneys.*

(Indorsed.)

On the application of Roswell Beardsley and Egbert Williams (by Beers & Howard, their attorneys) and on their affidavit dated March 25, 1871, I allow the within writ of certiorari to issue and let said affidavit be filed in the office of the clerk of Tompkins county.

W. MURRAY,
Justice of Supreme Court.

Dated 27th March, 1871.

At which day and place mentioned in the said writ and afterwards, to wit, at the general term of the supreme court held at the capitol, in the city of Albany, on the first Tuesday in March, 1872, come the said Roswell Beardsley & Egbert Williams, by Beers & Howard, their attorneys, and the said Mills Van Valkenburgh, county judge of the county of Tompkins, then made return to the said writ in the words and figures following—that is to say:

The Return of Mills Van Valkenburgh, County Judge of Tompkins County, to the Writ of Certiorari Hereto Annexed.

By virtue of and in obedience to the writ of certiorari hereto annexed and to me directed I do hereby certify and return to the justices of the supreme court that on the 10th day of December, 1870, the petition of James A. Burr and others, tax-payers of the town of Lansing, in the said county of Tompkins, with an affidavit of verification thereto annexed, was presented to me; which petition and affidavit are hereto annexed, marked "A."

That I did thereupon on the same day, to wit, the 10th day
115 of December, 1870, make an order for the publication of the notice of taking the proofs of the allegations in said petition and of the facts therein set forth as to the number of tax-payers joining in said petition and as to the amount of taxable property represented by them and of such other facts as might properly be inquired into under the provisions of chapter 907 of the Laws of 1869, a copy of which order is hereto annexed, marked "B."

That I did thereupon forthwith cause to be published a notice of

the time and place of the taking of such proofs, a copy of which notice, with the proof of the publication thereof, is hereto annexed, marked "C."

That at the time and place in notice specified, to wit, the 24th day of December, 1870, at ten o'clock in the forenoon, at the office of the county judge, in Ithaca, I did proceed to take the proofs of the allegations and facts aforesaid, which proofs are hereto annexed, marked "D."

That at the taking of said proofs Marcus Lyon, Esq., appeared as counsel for the petitioners. O. G. Howard, Esq., appeared as counsel for Roswell Beardsley and others, tax-payers of said town of Lansing, in opposition to said petition.

That after the taking of said proofs and the hearing of the arguments of the respective counsel the matter was duly submitted to me, and after due deliberation I did, on the 20th day of March, 1871, make and cause to be entered on record in Tompkins county clerk's office a judgment in the matter of said petition, of which judgment a copy is hereto annexed, marked "E."

All of which I do hereby certify and return, as by the annexed writ I am commanded.

In testimony whereof I have hereunto set my hand and seal this 1st day of September, 1871.

MILLS VAN VALKENBURGH. [L. S.]

And the various papers referred to in said return as marked A, B, C, D, and E, including the judgment of said county judge, are annexed to and form part of this record.

116 And at the said general term, holden at the city of Albany, after hearing arguments by Mr. Cox, of counsel for the said county judge, and by A. J. Parker, of counsel for the relators, the justices holding said term determined to decide upon the matters so submitted to them at the next term of said court, to be held at the city of Elmira on the first Tuesday of May, 1872, at which day and court, the parties aforesaid appearing and all and singular the premises being seen and by the justices aforesaid fully understood and mature deliberation thereupon having been duly had, it seems to the said court that the aforesaid decision and judgment of said Mills Van Valkenburgh, county judge of the county of Tompkins, are manifestly erroneous; therefore it is ordered and adjudged that the judgment, determination, and proceedings of the said county judge in the matters set forth in said writ and return, to wit, all the proceedings in relation to the issuing of bonds of the town of Lansing, in Tompkins county, in aid of the Cayuga Lake railroad, be, and the same hereby —, in all things reversed, annulled, and altogether held for naught; and it is further adjudged that the said relators, plaintiffs, do recover the sum of two hundred and thirty-five dollars as and for their costs and disbursements of this action and proceeding.

D. TARBELL, *Clerk.*

At a general term of the supreme court of the State of New York held in and for the third judicial department, at the court-house, in

the city of Elmira, in the county of Chemung, on the 7th day of May, 1872.

Present: Hons. Theodore Miller, presiding justice; Platt Potter & John M. Parker, associate justices.

117 THE PEOPLE *ex Rel.* ROSWELL BEARDSLEY & Others
against
MILLS VAN VALKENBURGH, Co. Judge.

"Proceedings reversed."
(Opinion by Potter.)
(A copy.)

JOHN G. COPLEY, *Clerk.*

THE PEOPLE *ex Rel.*
vs.
M. VAN VALKENBURGH, County Judge, &c.

Order of reversal filed May 21st, 1872.

O. P. HYDE,
Deputy Clerk.

STATE OF NEW YORK, }
Tompkins County, } *ss:*

CLERK'S OFFICE.

I, Philip J. Partenheimer, clerk of said county, do certify that I have compared the foregoing with the original judgment on file and record in said office, and do certify that it is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have hereunto subscribed my name and affixed the official seal of said county, at Ithaca, this 13th day of June, A. D. 1887.

P. J. PARTENHEIMER, *Clerk.*

(EX. I.)

Articles of Incorporation of C. L. R. R. Co.

Under and in pursuance of the requirements of the law of
118 the State of New York, passed in the year one thousand eight hundred and fifty, chapter one hundred and forty, entitled "An act to authorize the formation of railroad corporations and to regulate the same," and of the amendments thereof, and of other acts relating thereto, we, the undersigned, have associated ourselves together and formed a company for the purpose of constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property as hereinafter stated, and we do hereby certify:

1st. That the name assumed to distinguish such association and to be used in its dealings is The Cayuga Lake Railroad Co.

2nd. This association shall continue for the period of nine hundred & ninety-nine years unless sooner dissolved.

3rd. The said railroad is to be constructed from the New York

Central R. R. to Ithaca, the length of said road to be thirty-seven miles.

4th. The amount of the capital stock of said company shall be one million dollars, which shall be divided into ten thousand shares of one hundred dollars each.

5th. John J. Thomas, Henry Wells, Edwin B. Morgan, Robert B. Howland, Albert Beardsley, David Anthony, Henry J. Grant, Henry D. Bart, Cyrus H. Davis, James A. Burr, Samuel Adams, Samuel D. Willard, and Henry Chase shall be the first directors of said company and shall manage its affairs for the first year and until others are chosen in their places.

In testimony whereof we have hereunto subscribed our names and specified our respective places of residence and the number of shares of the capital stock of the association aforesaid taken and held by each of us respectively this eighteenth day of June, 1867.

Henry Wells, Aurora	60	shares.
Edwin B. Morgan, Aurora	60	"
119 John J. Thomas, Union Springs	20	shares.
David Anthony	15	"
Wm. B. Schobey	10	"
Henry Yawger	15	"
Amos R. Willets, Aurora	10	
L. A Pelton, Cayuga	10	
H. J. Grant, Ithaca	10	"
W. H. Chase, Union Springs	10	
C. H. Adams, "	10	
G. H. Chase "	10	
D. D. Allen, Union Springs	5	
John J. Bush, Aurora	5	
C. H. Davis, Cayuga	10	
E. B. Hutchinson, Cayuga	5	
H. C. Hutchinson, Cayuga	5	
Benj. A. Fordyce, Union Springs	10	
Abbot H. Chase, Levanna	10	
I. V. Shank, Union Springs	5	
Thos. Shoemaker, "	5	
A. Beardsley, Union Springs	10	
E. C. Bowen, Union Springs	10	
Geo. A. Kyle, Cayuga	10	
Joseph Esty, Ithaca	1	
H. A. Dow, Ithaca	1	
R. B. Howland, Union Springs	15	
R. B. Robinson, "	5	
B. Robinson, "	5	
J. C. Yawger, "	10	
Samuel Adams, King's Ferry	5	
Jos. A. Burr, Ludlowville	5	

STATE OF NEW YORK, } ss:
County of Cayuga, }

On this 28th day of June, A. D. 1867, before me, the subscriber, personally appeared Henry Wells, Edwin B. Morgan, John J. Thomas, David Anthony, William B. Schobey, Henry Yawger, Amos R. Willits, L. A. Pelton, H. J. Grant, W. H. Chase, C. H. Adams, G. H. Chase, D. D. Allen, John J. Bush, C. H. Davis,
120 E. B. Hutchinson, H. C. Hutchinson, Benj'n A. Fordyce, Abbot H. Chase, I. V. Shank, Thos. Shoemaker, A. Beardsley, E. C. Bowen, George A. Kyle, Joseph Esty, H. A. Dow, R. B. Howland, R. B. Robinson, B. Robinson, J. C. Yawger, Samuel Adams, & James A. Burr, to me known to be the same persons described in and who executed the annexed articles of association, and severally acknowledged that they had executed the same.

DAN'L A. ROBINSON, JR.
Justice of the Peace of Cayuga Co.

STATE OF NEW YORK, } ss:
County of Cayuga }

Henry Wells, John J. Thomas, & Edwin B. Morgan, being severally duly affirmed, each for himself says that he is one of the directors of the Cayuga Lake Railroad Company named in the articles of association of said company, which are hereunto annexed; that the amount of stock required by — section 2 of an act to authorize the formation of railroad corporations and to regulate the same, passed April 2nd, 1850, has been in good faith subscribed and ten per cent. paid in cash thereon to the directors of said railroad company, and that it is intended in good faith to construct, maintain, and operate the road mentioned in said articles of association.

HENRY WELLS,
JOHN J. THOMAS,
EDWIN B. MORGAN.

Subscribed and affirmed to before me this 18th day of June, 1867.

DAN'L A. ROBINSON, JR.,
Justice of the Peace of Cayuga Co.

(Endorsed:) Cayuga Lake Railroad Company. Filed and recorded July 1, 1867. Erastus Clark, deputy sec'y of state.

121 STATE OF NEW YORK, } ss:
Office of the Secretary of State, }

I have compared the preceding with the original articles of association of the Cayuga Lake Railroad Co., with affidavit and acknowledgment thereto annexed, filed and recorded in this office on the first day of July, 1867, and hereby certify the same to be a correct transcript therefrom and of the whole — said original.

Witness my hand and seal of office, at the city of
[SEAL.] Albany, this thirteenth day of June, one thousand eight hundred and eighty-seven.

FREDERICK COOK,
Secretary of State.

Testimony of Alonzo H. Clark.

The plaintiff then called ALONZO H. CLARK, who was sworn and testified as follows:

I was one of the commissioners for bonding the town of Lansing. John T. Knettles and Darius Hall were the other commissioners. Knettles is dead. I received the bonds, before they were signed, from the Cayuga Lake Railroad Company. The company had them printed. The bonds were signed in the office of the attorney to the railroad company. Each of the commissioners then took home 25 of the bonds and signed the coupons. The other commissioners delivered the bonds they took to me, and I delivered all the bonds to the treasurer of the railroad company. Before I delivered the bonds the commissioners had information of the certiorari proceedings above mentioned. A conversation was had by us with Talmadge Delafield, the treasurer of the railroad company, in regard to them at the house of Mr. Knettles. Mr. Delafield, Mr. Cox, and Marcus Lyon, who was attorney for the railroad company at that end of the route, were present.

122 The witness was then asked to state what was said at that interview with reference to those bonds and bonding proceedings.

To this question the plaintiff objected as immaterial and incompetent. The court overruled the objection and allowed the witness to answer the question. Plaintiff excepted.

The witness thereupon testified in answer to the question:

The officers of the railroad company had been pressing us for the bonds, and we objected to issuing the bonds on account of these certiorari proceedings. The officers of the railroad company demanded the bonds, and a conversation came up in regard to what would be the condition of the town if the county judge's proceedings were reversed. The reply was made by Mr. Cox, I think, that the town would be left just as it was. I said to Mr. Delafield, "I suppose we will have to give up the bonds." We wanted some security that our $75,000 should be expended in the town of Lansing.

They made the proposition to give us this bond that it should be and at the same time volunteered to give us the bond of indemnity, which is read in evidence, and that was given and delivered to me before the bonds were executed. Each of the seals now appearing on the bonds consists of a wafer covered with a piece of yellow paper adhering to it and impressed upon the bond. These were not affixed when I signed the bonds.

The witness was then asked:

"Were these seals put on with your knowledge or consent or that of any of the commissioners?"

To this question the plaintiff objected on the ground that each bond expressly states that it was delivered under the hand and seal of the commissioners. The court overruled the objection and plaintiff excepted.

The witness answered:

123 "Not to my knowledge. I have no knowledge as to how they were put on. All 75 of these bonds now have seals on them opposite the name of each commissioner; these seals consist of diamond-shaped pieces of paper affixed with some adhesive substance."

On cross-examination the witness testified:

The purpose of the bond of indemnity was to give some assurance that the railroad would be built through our town. We were afraid that people would blame us if we gave up the bonds and the money was used somewhere else. The bond had no relation whatever toward a lawsuit. We didn't think of that; that part of it was volunteered by the company; they spoke of it the day they were at Knettles'. My recollection is that they did not then have the bond prepared. In August we told them we had no funds to get the bonds printed.

When I delivered the bonds to Mr. Delafield I supposed they were valid and that we had done everything that we could to make them valid. How the seals came to be left off I do not know.

When I first saw the bonds afterwards, on a trial in October, 1875, the seals were on the bonds. If the seals were omitted it was by an inadvertence.

ALONZO H. CLARK was then recalled and testified that the town of Lansing had no official seal. These same bonds were produced and put in evidence at Canandaigua in June, 1877, in the case of Stewart *vs.* The Town of Lansing, tried before Judge Wheeler and jury, and I was sworn as to their execution.

It was here conceded that the town had never paid any interest on these bonds.

Evidence of Frederic Collins.

FREDERIC COLLINS, a witness produced on behalf of plaintiff, being duly affirmed, deposes and says as follows:

Q. 1. Please state your name, age, residence, and occupation.

124 A. Frederic Collins; I reside at 1918 Spruce street, and am not at present in any business. I am 63 years of age.

Q. 2. What business were you in — the years 1872 and 1873?

A. I was in the banking business in the firm of Elliott, Collins & Co., 109 South Third street, Philadelphia.

Q. 3. Who were the other members of that firm?

A. William Elliott and his two sons, Adolphus W. and Frederick Elliott.

Q. 4. What members of the firm are living besides yourself?

A. None but myself; all dead.

Q. 5. Do you remember any transactions in 1872 and 1873 with the Cayuga Lake Railway Company?

A. I do.

Q. 6. Will you please say what those transactions were?

A. I cannot give them specifically.

Q. 7. Were these the notes of the Cayuga Lake Railway Company?

A. They were the notes.

Q. 8. Do you recollect how you got these notes?

A. I cannot say.

Q. 9. Do you remember how these notes were paid?

A. I do not.

Q. 10 & 11. Who represented the Cayuga Railway Company in the transactions? With whom did you deal?

A. Mr. Talmadge Delafield, residing at Aurora, in the State of New York.

Q. 12. Was he an officer of the company?

A. He was the treasurer.

Q. 13. Can you say what other, if any, transactions you had with Cayuga Lake Company?

A. I cannot specifically; there are entries, on our books, exactly for what purpose I cannot say, but, with some faint recollection, were connected with the proceeds of bonds sold.

125 Q. 14. What connection, if any, had this transaction of a credit with the notes and the town bonds of which you spoke in a former answer?

A. As expressed before, with a faint recollection of there being bonds sold. I cannot say positively.

Q. 15. During this negotiation and up to its close did you hear or know of anything impugning the validity of the bonds of the town of Lansing, New York?

Objected to, as it does not appear that the witness knows anything of the bonds of the town of Lansing.

A. I did not.

Q. 16. Did you hear or know at the time named anything impugning the validity of the town bonds held as collateral for the notes of which you spoke?

Objected to as immaterial and irrelevant.

A. I did not.

Cross-examined:

Q. 1. Were you a member of the firm of Elliot, Collins & Company prior to 1872?

A. From January 1st, 1871, until January, 1874.

Q. 2. Did you during that time act as bankers for the Cayuga Lake Railroad Company?

A. We did act as bankers in Philadelphia for the Cayuga Lake Railroad Company.

Q. 3. Was Mr. Elliott during the period mentioned director of the Cayuga Lake Railroad Company?

A. I cannot recollect that he was.

Q. 4. Have you any personal recollections of the transactions to which you have referred in your direct examination with the Cayuga Lake Railway Company?

—. I have no personal recollection.

Q. 5. The only recollection you have is, then, from the memoranda?

126 A. I have a faint recollection that Mr. Cox, the solicitor for the company, being in our office, in connection with some transactions, about that time.

Q. 6. Then how do you connect the credit of $54,337.50 with proceeds of the bonds?

A. Nothing positively.

Q. 7. Have you any idea or recollection as to the amount of the bonds that you handled?

A. I have not.

Q. 8. Or what bonds they were?

A. No.

Q. 9. Are you able to positively state that the credit of $54,337.50 was proceeds of bonds sold?

A. I cannot.

Q. 10. If proceeds of bonds sold, are you able to say whether your firm sold them or the Cayuga Lake Railway Company sold them?

A. I cannot.

Q. 11. You have no knowledge to whom sold if the bonds were sold?

A. No.

Q. 12. Did you personally negotiate their sale if they were sold?

A. I did not.

Q. 13. Have you any recollection of any question as to the validity of the bonds?

A. I recollect nothing questioning the validity of any bonds that we had.

Q. 14. Do you remember whether the railway company have authorized you to sell the bonds?

A. I do not remember, but assume the bonds could not be sold except by authority and direction of the railway.

Q. 15. Do you know or have you ever known, or did the firm of Elliott, Collins & Company, to your knowledge, have any transactions with George W. Brackenridge or John J. Stewart?

A. No; none that I can recollect.

127 Q. 16. Have you any acquaintance with a gentleman by the name of Stillman, of New York?

A. I had formerly.

Q. 17. Do you remember any transaction with him in regard to these bonds?

A. I have no recollection.

Q. 18. Do you remember anything of Mr. Elliott, your senior partner, being examined before Mr. Bell in regard to these bonds since the transactions which you have testified to?

A. I have not.

Q. 19. Have you ever seen the deposition given in the case of John J. Stewart and the Town of Lansing by him?

A. I have. I saw the same last evening.

Q. 20. In his deposition taken in that suit he states that your firm did not sell the bonds. You have no recollection but that his statement is entirely correct, have you?

Counsel for plaintiffs objects to this question as irrelevant and immaterial.

A. None whatever.

Q. 21. You said you had a faint recollection in regard to the transaction. Do you remember anything as to whether the bonds, if they were sold, were or were not sold at a large discount?

A. I have not.

Q. 22. Can you state that the credit $54,337.50 was not an ordinary deposit by the Cayuga Lake Railway Company with you to their credit?

A. I think not.

Q. 23. Can you state positively that it was not?

A. I cannot.

Q. 24. Were you ever a director of the Cayuga Lake Railway Company?

A. I was a director. I was a director at the time of the
128 failure of the Cayuga Lake Railway Company, which was in the fall of 1873. I was a director for a year before that failure, possibly for a longer time, but I cannot state positively. I am not able to state positively whether or not I was a director at the time the railway company gave us the notes, which time, I think, was in November, 1872.

Redirect examination:

Q. Did you attend the meetings of the board of directors?
A. On some occasions.
Q. How often do you mean?
A. I cannot state that.
Q. Was your attendance frequent or seldom?
A. That I cannot recall.
Q. Where were the meetings of the board held?
A. At the village of Aurora, New York.

Recross-examination:

Q. From whom did you get the bonds that you have spoken of?
A. From the Cayuga Lake Railway Company, I presume.

FREDERIC COLLINS.

The bonds mentioned in the complaint and the coupons and those coupons mentioned in the complaint which were payable January 1, 1877, down to and including those payable January 1, 1884, were then read in evidence. The coupons which became due July 1, 1876, were not offered in evidence and the plaintiff did not claim to recover upon them.

They were all similar in tenor, except as to the dates of payment of the several coupons, and a copy of one of the bonds and one of the coupons is as follows:

(*Copy Bond.*)

No. 1. UNITED STATES OF AMERICA, $1,000.

State of New York.

(Vignette.)

Town of Lansing, county of Tompkins.

[Stamp, 50c.]

129 Issued by virtue of an act of the legislature of the State of New York entitled "An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same, passed April 24, 1850, so as to permit municipal corporations to aid in the construction of railroads," passed May 18th, 1869.

This act authorizes the town of Lansing, in the county of Tompkins, to subscribe to the stock of the Cayuga Lake Railroad Company and to issue town bonds in payment therefor. The whole amount of the bonds to be issued in pursuance of said act is $75,000.

Know all men by these presents that we, the undersigned, commissioners under the above-entitled acts for the town of Lansing, in the county of Tompkins and State of New York, upon the faith and credit and in behalf of said town, for value received, promise to pay to the bearer the sum of one thousand dollars on the first day of January, in the year one thousand nine hundred and two (1902), at the Fourth National Bank of New York, in the city of New York, with interest, at 7 per cent. per annum, from and after the first day of January, 1872, payable semi-annually on the first day of July and January in each year, at the same place, on presentation and surrender of the coupons for such interest hereto annexed.

In witness whereof we have hereunto set our hands and seals and have caused the coupons hereto annexed to be signed by Darius Hall, one of our number, this 1st day of October, in the year one thousand eight hundred and seventy-one.

County Seal of Tompkins Co.

DARIUS HALL, [SEAL.]
ALONZO H. CLARK, [SEAL.]
JOHN T. KNETTLES, [SEAL.]
Commissioners.

Registered in the county clerk's office of Tompkins county.

130 (*Copy Coupon.*)

$35. The town of Lansing, county of Tompkins, will pay the bearer hereof, at the Fourth National Bank of New York, in the city of New York, on the first day of January, 1887, the sum of thirty-five dollars for six months' interest then due on bond No. 1.

DARIUS HALL,
Commissioner.

Evidence of Tallmadge Delafield.

The plaintiff then called TALLMADGE DELAFIELD, who was sworn and testified as follows:

In 1870 and 1871 I was treasurer of the Cayuga Lake Railroad Company, and then resided in Aurora, Cayuga county, New York. My duties were to attend to the financial business of the company. I received the 75 bonds of the town of Lansing mentioned in the complaint from Alonzo H. Clark, one of the commissioners named in the order of the county judge that has been read. At the time I received those bonds from Mr. Clark the commissioners named in the order subscribed to the capital stock of the Cayuga Lake Railroad Company to the amount of $75,000. When I received those bonds from Mr. Clark I delivered to him certificates of the capital stock of the Cayuga Lake Railroad Company to the amount of $75,000. The railroad company has never at any time received any portion of that stock back. I received those bonds and delivered the certificates in October, 1871. At the time I received the bonds coupons were attached to them for the semi-annual installments of interest, which began to run from January 1, 1872. I at once took the bonds to Leonard, Sheldon & Foster, bankers in New York, and they loaned the company upon those bonds $50,000. The railroad company has never received these bonds back since then.

131 Leonard, Sheldon & Foster had power and instructions from the company to sell the bonds. The bonds subsequently passed into the possession of Elliott, Collins & Co., bankers of Philadelphia, and they had authority from the railroad company to sell the bonds at from 70 to 80 cents on the dollar.

Q. State whether or not they did subsequently report to you that they had sold the bonds.

Defendant's counsel objected.

By the COURT: I think it competent to show the fact that they did make a report.

Q. State whether or not they subsequently made any report to you in reference to the bonds.

A. They sent me a statement. I received it by mail at about the time of its date—February 8th, 1873.

The statement referred to was then offered in evidence.

(Elliott, Collins & Co., bankers, 109 So. Third St.)

PHILADELPHIA, *Feb'y* 8, 1873.

Cayuga Lake R. R. Co.

75,000 Town of Lansing bonds	$54,337 50
Notes March 29, $50,000; 49 days' interest, 408.33	49,591 67
	$4,745 83

Credit Cayuga Lake $4,745.83.

To the admissability of this in evidence the defendant objected on the ground that it was improper and incompetent and does not prove a sale. The court sustained the objection, and plaintiff excepted.

The witness further testified:

I don't know in whose handwriting this statement is or whether it is in the handwriting of any one connected with the Phila-
132 delphia house. I know that I received that from the Philadelphia house about the time it bears date. At about the time I received the statement jus- shown me Elliott, Collins & Co. credited the railroad company with the net proceeds of the sale of the 75 bonds of the town of Lansing before mentioned. The net proceeds of that sale were $54,337 50. Those proceeds paid the amount of the company's indebtednees to them upon the loan made upon the bonds and left a net credit to the railroad company of $4,745.83. The railroad company drew on them for that amount as we had occasion. The railroad company spent upon the construction of its railroad the sum of $50,000, which it received from Leonard, Sheldon & Foster. I made a new note to Elliott, Collins & Co. for the loan obtained of them. The 75 bonds referred to were transmitted directly by Leonard, Sheldon & Foster to Elliott, Collins & Co. They did not go through the hands of the railroad company. I borrowed $50,000 of Elliott, Collins & Co. and paid up the loan of Leonard, Sheldon & Foster. The occasion of our changing the loan from New York to Philadelphia was because Elliott, Collins & Co. were our bankers in Philadelphia and desired to control the financial operations of the company. They therefore offered to make the loan and they advanced the money to the New York house. I gave Leonard, Sheldon & Foster, upon the consummation of that transaction, a draft upon Elliott, Collins & Co. dated November 27, 1873. The transaction was a transfer of the loan from one to the other:

The draft referred to was then put in evidence.

$48,812.50. NEW YORK, *Nov. 27th*, 1872.

Pay to the order of Leonard, Sheldon and Foster forty-eight thousand eight hundred and twelve $\frac{50}{100}$ dollars, value received, and charge the same to account of—

T. DELAFIELD,
Treasurer of the Cayuga Lake Railroad Co.

133 To Messrs. Elliott, Collins & Co., Philadelphia, Pa.

(Endorsed:) Leonard, Sheldon & Foster. Pay 1st Nat'l Bank, Phil'a, or order. A. Lane, cashier; G. Philler, vice-pres't.

On being cross-examined the witness testified:

Before the bonds were issued I heard that there were likely to be some proceedings instituted by tax-payers of the town of Lansing to reverse the judgment of the county judge, or that there may have been some proceedings.

The bond dated September 5, 1871, was then shown the witness, who testified:

The signatures to the bond are the genuine signatures of the president, secretary, and treasurer at that time of the Cayuga Lake Railroad Company.

The bond referred to was then offered in evidence by the defendant. The plaintiff objected to the admissibility of the bond on the ground that it was immaterial and incompetent; that the officers of the railroad company were not authorized to bind that company by instruments under seal, and that before it could be introduced the resolution of the directors of the railroad company authorizing its execution should be offered in evidence. The court overruled the objection and allowed the bond to be read in evidence. The plaintiff excepted.

134 *Indemnity Bond.*

Know all men by these presents that the Cayuga Lake Railroad Company is held and firmly bound to Darius Hall, John T. Knettles, and Alonzo H. Clark in the sum of one hundred and fifty thousand dollars, to be paid to the said Darius Hall, John T. Knettles, and Alonzo H. Clark, or to their certain attorney, executors, administrators or assigns;

For which payment, well and truly to be made, the said The Cayuga Lake Railroad Company *both* hereby bind itself, its successors in office, and assigns, firmly by these presents.

Sealed this 31st day of August, in the year eighteen hundred and seventy-one (1871).

Whereas the above-named Darius Hall, John T. Knettles, and Alonzo H. Clark have been duly appointed and commissioned by the county judge of Tompkins county as commissioners for the town of Lansing, Tompkins county, for the purpose of issuing the bonds of said town to the amount of seventy-five thousand dollars ($75,000) in aid of the said The Cayuga Lake Railroad Company, and for other purposes provided for in and by chapter nine hundred and seven (907) of the Laws of New York for the year 1869;

And whereas said Darius Hall, John T. Knettles, and Alonzo H. Clark, as commissioners as aforesaid, have subscribed for seven hundred and fifty shares of the capital stock of the said The Cayuga Lake Railroad Company and have agreed as such commissioners to pay therefor in the bonds of said town of Lansing upon the request of the said railroad company or their attorney:

Now, therefore, the condition of this obligation is such that if the said Cayuga Lake Railroad Company shall or do well and truly indemnify and save and keep forever *lawless* the said Darius Hall, John T. Knettles, and Alonzo H. Clark, their executors, administrators, heirs, or assigns, jointly and severally, from all personal responsibility, cost, damages, expenses, suits at law, or other
135 legal proceedings which may occur or may be incurred or suffered by reason of said Darius Hall, John T. Knettles, and Alonzo H. Clark acting as such commissioners in subscribing for said capital stock and issuing and delivering to the treasurer of said The Cayuga Lake Railroad Company the bond of said town of Lansing for said sum of seventy-five thousand dollars in payment and for said capital stock, and also if the said The Cayuga Lake Railroad Company shall faithfully expend the proceeds of said bonds in the construction of their said railroad in the said town of Lansing and not elsewhere, then this obligation to be null and void; otherwise to be and remain of full force and virtue.

Under and according to a resolution of the board of directors of the Cayuga Lake Railroad Company, adopted this 5th day of September, A. D. 1871.

[SEAL.]

HENRY WELLS, *Pres't.*
CHARLES H. ADAMS, *Sec'y.*
TALLMADGE DELAFIELD, *Treas'r.*

[$37.50 revenue stamp. Canceled Sept. 5th, '71. H. W.]

Witness further testified:

When the bonds were transferred from Leonard, Sheldon & Foster to Elliott, Collins & Co. it was done on my written order as treasurer of the railroad company. Elliott, Collins & Co. took up the loan in New York. It was simply a transfer of the original transaction from Leonard, Sheldon & Foster to Elliott, Collins & Co., and it was done by me as treasurer of the Cayuga Lake Railroad Company.

By the COURT:

Q. It was simply a transfer of the original transaction from Leonard, Sheldon & Foster to Elliott, Collins & Co.?

A. Yes, sir; that is it.

By Mr. HURLBUT:

Q. And that was done by you as treasurer of the Cayuga Lake Railroad Company?

A. Yes, sir.

By Mr. KERNAN:

136 Q. I understand from the papers that you went to their bankers in Philadelphia and borrowed on time notes enough money—borrowed it there and it was passed to the credit of the road? They, you say, were your bankers.

A. Yes, sir.

Q. Then you gave the New York firm a check or draft on the Philadelphia firm and took up your note and directed the bonds to be sent to them? That is as I understand it.

Mr. GARFIELD: That is not it.

By Mr. KERNAN:

Q. Now, are these the two notes that you gave to Elliott, Collins & Co. on the occasion when you went to get some money?

A. Why, yes; those express the whole thing—bonds of the town of Lansing as collateral security.

By the COURT:

Q. Stock notes?

A. Yes, sir.

While the bonds were pledged as collateral, the railroad company controlled the sale of them. I was not present personally when they were sold. I knew nothing whatever personally of the sale of these bonds to anybody. My best recollection is that Mr. Collins, of the firm of Elliott, Collins & Co., was a director of the Cayuga Lake Railroad Company in 1872 and 1873, and at the time I authorized the transfer of Leonard, Sheldon & Foster, I believe, Mr. Leonard was a director of the railroad company. The Cayuga Lake Railroad Company failed, the first time, in 1873. The railroad has always been run, and is a good, substantial road. When it failed the stockholders got nothing.

Witness was then re-examined, and testified as follows:

The Cayuga Lake railroad was built all the way from Cayuga bridge to Ithaca, and has been running ever since. The road was constructed through the town of Lansing. I don't believe I said anything to Leonard, Sheldon & Foster or to Elliott, Collins & Co. at any time about the proceedings adverse to the bonding
137 that were talked about or possibly had been begun. The pledgees of the bonds were authorized to sell the bonds at a certain price, and were authorized to sell at their own price if the company did not pay its notes. At the time of the original loan and at the time of the transfer of the loan to Elliott, Collins & Co. they were authorized to sell the bonds, before the maturity of the notes, at 70 cents on the dollar, and to reimburse themselves out of the proceeds. Mr Elliott, of the firm of Elliott, Collins & Co., is dead.

Recross-examination:

In the notes given to Elliott, Collins & Co. there was a power of sale of collateral on default. I verbally authorized Elliott, Collins & Co. at the time the loan was made by them to sell the bonds at from 70 to 80 cents on the dollar before default.

Evidence of Tallmadge Delafield.

The plaintiff then recalled TALLMADGE DELAFIELD, who testified as follows:

The writ of certiorari which has been put in evidence, which was addressed to the county judge of the county of Tompkins, was never served upon me or any other officer of the Cayuga Lake Railroad Company, so far as I know, and so far as I know no officer of the company was represented in that case. The credit of Elliott, Collins & Co., of Philadelphia, to the Cayuga Lake Railroad Company testified to by Frederick Collins in his deposition was a credit of the proceeds of the sale of the bonds of the Cayuga Lake Railroad Company. It was not a deposit of other separate funds made by the railroad company.

138 (EX. J.)

Deposition of Darius Hall.

UNITED STATES OF AMERICA, *Northern District of New York.*

STATE OF NEW YORK, *County of Tompkins,* } *ss:*

Be it remembered that on this 27th day of February, 1885, I, William Hazlitt Smith, a notary public in and for the county aforesaid and duly commissioned and qualified under the laws of the United States to take depositions for use in the circuit courts of the United States, did call and cause to be and personally appear before me, at the residence of Darius Hall, one mile west of Lansingville, in the town of Lansing, Tompkins county, New York, and in the said district, the said Darius Hall, to testify and the truth to say on the part and behalf of the defendant in a certain suit or matter of controversy now depending and unde-rmined in the circuit court of the United States for the northern district of New York, wherein George W. Brackenridge is plaintiff and The Town of Lansing is defendant (action No. —).

And the said DARIUS HALL being about the age of 75 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said Darius Hall and he did thereupon depose, testify, and say as follows, viz:

(Examined by Mr. UNDERWOOD, counsel for defendant:)

Q. Please state your name, age, occupation, and residence.

A. My name is Darius Hall; my age is 75; my occupation is a physician and farmer, and my residence is the town of Lansing, Tompkins county, N. Y.

139 Q. Have you also been a magistrate in that town for several years?

A. I have.

Q. Were you one of the commissioners appointed by Judge Van Valkenburgh for the town of Lansing to issue its bonds in aid of the Cayuga Lake Railroad Company?

A. I was.

Q. Did you take part in executing the bonds and coupons which purported to have been issued for that purpose?

A. I did.

Q. Will you please state what you did personally towards the execution of those bonds?

A. I signed all the bonds and the coupons on $25,000 of the bonds. The total issue was $75,000.

Q. Where did you sign the bonds?

A. In Judge Lyon's office, in Ithaca, in this county.

Q. Were the bonds signed by the other commissioners at the same time?

A. They were.

Q. And what was done with them then?

A. Each commissioner took $25,000 worth home with him for the purpose of signing the coupons.

Q. Were any seals put on the bonds opposite the names of the commissioners at the time the bonds were signed?

A. There were not.

Q. Were any put on afterwards, to your knowledge, by the consent or direction of yourself or either of the other commissioners?

A. Not by myself or by my direction, and not to my knowledge by either of the other commissioners or by their consent or direction.

Q. Did you ever give any directions about putting them on to anybody?

A. Never.

Q. You were present at the trial of the case of John J. Stewart against The Town of Lansing, at Canandaigua, before Judge Wheeler, in 1877, were you not?

140 A. I was.

Q. Were any of these bonds there shown you?

A. One was shown me.

Q. Was it in the same condition in respect to seals as when executed by you and the other commissioners?

A. It was not. There was a seal opposite the name of each of the commissioners on that bond.

Q. You say you took $25,000 in amount of those bonds home with you to sign the coupons. What did you do with those bonds and what became of them?

A. I signed all the coupons, and then delivered them to Mr. Alonzo H. Clark, one of the commissioners.

Q. About when was that?

A. It was in the fall of 1871. I think in October.

Q. And there were no seals opposite the names of the commis-

sioners on that lot of bonds when you delivered them to Mr. Clark, were there?

A. Not any.

Q. Did the commissioners of the town know of the appeal from the county judge's decision in the bonding matter (the certiorari proceeding) before they executed the bonds?

A. We all knew it.

Q. State what you know in regard to whether the officers of the Cayuga Lake Railroad Company knew about those proceedings before the execution of the bonds.

A. I know that the treasurer of the road, Mr. Delafield, and Mr. Cox, the attorney, knew of the certiorari proceedings before the bonds were executed, for this reason: Some time, shortly prior to the execution of the bonds, Mr. Cox and Mr. Delafield came on behalf of the railroad company to see us commissioners. Mr. Clark and myself went with Mr. Cox and Mr. Delafield to Mr. Knettles' house. He was the other commissioner. We found Mr. Knettles near his barn, and there had a conversation together. In that conversation Mr. Cox and Mr. Delafield endeavored to get us to issue the bonds. I remember asking what condition the town would be in if we
141 should issue the bonds, now that the case was removed into the supreme court, in case the decision of that court should be unfavorable. One of them, I think Mr. Cox, replied that in that case the town would be left in the same condition as if nothing had been done. We express- our reluctance to issue the bonds because fearful of the result in case of an adverse decision by the supreme court, and also because it was rumored that the railroad company would only conduct their road to Aurora and the money of the town would be expended somewhere out of the town. They then proposed in this conversation to give a bond of indemnity that the money should be expended within the town and to indemnify us commissioners against loss.

Q. What do you know in regard to the giving of that bond of indemnity?

A. Such a bond was given before we issued the bonds. I saw it, and Mr. Clark, one of the commissioners, took charge of it.

Q. Before the bonds were executed by you was a written notice served on you relating to the execution of the bonds?

A. There was.

Q. Where is that notice?

A. It is in my dwelling-house somewhere. I have searched for it and have been unable to find it; have looked in all places where I can think it would be.

Q. Please state its contents to your best recollection.

A. It stated that the proceedings before Judge Van Valkenburgh had been removed into the supreme court and that that virtually stayed all proceedings. The notice came from O. G. Howard, an attorney of Ithaca, whom I understood to be acting for certain of the towns-people in opposition to the bonding proceedings.

Q. Was the bond of indemnity given to you before or after you subscribed for the stock of the company?

A. It was executed before we did anything.

142 Q. Did the commissioners or the railroad company get up the form of the bond and produce them for execution?

A. The commissioners did not get up the form of the bonds. I understand the railroad company did.

Q. Do you know what Mr. Clark did with the $25,000 of bonds you handed him, as you have stated?

A. I do.

Q. What did he do with them?

P. I saw him take the bonds to young Mr. Delafield, the son of the treasurer of the road, who had come up with Mr. Clark in the buggy.

(Signed) DARIUS HALL.

UNITED STATES OF AMERICA, }
Northern District of New York. }

STATE OF NEW YORK, }
County of Tompkins, } *ss:*

I, William Hazlitt Smith, a notary public in and for the State and county aforesaid and duly commissioned and qualified under the laws of the United States to take depositions for use in the circuit courts of the United States, do hereby certify that the reason for taking the foregoing deposition is and the fact is that the testimony of the said witness is material and necessary for the defendant in the cause in the caption of said deposition named, and that the said witness is ancient and infirm, being 75 years of age and sick and confined to his house, his sickness being chronic neuralgia, and that by reason of his said age and infirmity or sickness the said witness will be unable to attend the trial of said cause at either Utica, Canandaigua, Albany, or Syracuse, the places where circuit courts are held in said district.

I further certify that a notification of the time and place
143 of taking the said deposition, signed by me, was made out and served on Shearman and Sterling, attorneys for the plaintiff, to be present at the taking of the said deposition, and to put interrogatories, if they should see fit, as appears by the said notice and admission of service of the same, annexed hereto and returned herewith.

I further certify that on the 27th day of February, 1885, at 11 o'clock a. m., I was attended at the residence of the said witness, Darius Hall, one mile west of Lansingville, in the town of Lansing, in said Tompkins county, by George Underwood, attorney and of counsel for defendant in said action, and that no one appeared on behalf of the plaintiff; that I was then and there also attended by the said Darius Hall, the witness, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statements, and after carefully reading the same to the witness he subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking said deposition, with my own hand to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In testimony whereof I have hereunto set my hand and official seal the 28th day of February, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.]

WM. HAZLITT SMITH,
Notary Public.

144 *Evidence of J. T. Knettles.*

The plaintiff then called J. T. Knettles, who gave evidence tending to show that at the time the bonds which had been taken by Commissioner Knettles for the purpose of signing coupons were delivered to Mr. Clark by Mr. Knettles the seals were not attached to them.

Judgment.

STEWART
v.
LANSING.

The plaintiff then offered in evidence a judgment-roll in an action wherein John J. Stewart was plaintiff and The Town of Lansing was defendant, in which judgment was entered in the circuit court of the United States for the northern district of New York on December 19, 1878; also the writ of error sued out by said Stewart to obtain the review of said judgment by the United States Supreme Court, and the mandate of said court affirming said judgment filed in this court June 30th, 1882.

The defendant objected to the introduction of the record on the ground that an adjudication in an action upon one set of coupons is not material or conclusive in an action upon another set of coupons, and that there is nothing in the adjudication in the judgment-roll offered in evidence that adjudges anything in relation to the second set. The court overruled the objection and received the record in evidence, and the plaintiff excepted.

The following is an abstract of the record so received in evidence:

John J. Stewart brought suit in this court against said Town of Lansing, defendant herein, and in his complaint alleged that he was the owner of the $75,000 of bonds with coupons annexed (being the bonds and coupons in this suit with other coupons), and asked judgment against said town for all the coupons due on all
145 said bonds July 1st, 1872, to July 1st, 1876, both inclusive, except the coupons due July 1st, 1873.

The defendant duly answered, setting up the defenses urged in this action.

The cause was tried in June, 1877, by the court and a jury, and the jury rendered a verdict for the defendant upon the merits, whereupon and upon December 19th, 1878, judgment was duly entered on said verdict in said action dismissing said complaint on the merits.

Evidence of Dr. Tarbell.

The plaintiff then called Dr. TARBELL, who was sworn and testified as follows:

I was county clerk of Tompkins county from January 1, 1871, to December 31, 1876, inclusive. I know Mr. Cox, of Auburn. I think he was attorney for the Cayuga Lake Railway Company with Marcus Lyon, who was also acting for the railroad company. Mr. Cox brought me the bonds of the town of Lansing to be registered in my office as county clerk. The bonds were sealed on the right hand with the seal of Tompkins county. The seal was affixed by me. The bonds had been signed by the commissioners at that time. The bonds were registered in my office, as clerk of Tompkins county, December 21, 1871, and recorded at that time in Mr. Cox's handwriting.

(Record produced and shown witness.)

WITNESS: That is the record and that is my signature, as clerk, attached to it. In the record there is no entry of the seal opposite the name of any commissioner, and there was then no seal opposite their names in the bonds. The county seal that I attached is indicated in this record.

146 The defendant objected to evidence of the fact that in the registration of the bonds there is no entry of a seal being on the original bonds as incompetent and irrelevant. The court overruled the objection and the plaintiff excepted.

WITNESS: We compared one of these bonds with the copy, and then every other bond with the one so compared, and no seals appeared on the bonds opposite the names of commissioners when they were registered in my office November 21st, 1871.

The official record of registration was here offered and read in evidence on behalf of defendant, and is a copy of the bond set out before in the record, except that there is nothing on it to indicate the presence of seals opposite the names of the commissioners.

HOWLAND & WHEELER,
Plaintiff's Attorneys.
H. V. HOWLAND,
Of Counsel for Pl'ffs.

147 *Testimony and Exhibits in Behalf of John T. Lytle.*

United States Circuit Court, Northern District of New York.

TOWN OF LANSING, Plaintiff,
vs.
JOHN T. LYTLE, Defendant. } In Equity.

JOHN T. LYTLE, Plaintiff,
vs.
TOWN OF LANSING, Defendant. } Cross-Bill.

Evidence on the part of John T. Lytle in the above-entitled actions, taken at the office of H. V. Howland, July 25, 1888, at Auburn, N. Y.

The counsel for John T. Lytle placed in evidence the deposition of John T. Lytle, taken in the case of John T. Lytle *vs.* Town of Lansing, and sworn to May 18, 1887, the said case being the first suit, and the documentary evidence therein referred to; also the deposition of George W. Brackenridge, taken in the same suit, and sworn to May 19, 1887.

The evidence was here closed on the part of John T. Lytle.

Dated July 25, 1888.

JOHN M. BRAINARD,
Notary Public, Cayuga County.

The depositions and documentary evidence referred to, and the stipulation under which they were taken, and also the deposition of A. Luria, subsequently taken, are as follows:

148 *Stipulation.*

United States Circuit Court for the Northern District of New York.

JOHN T. LYTLE
against
THE TOWN OF LANSING. }

It is hereby stipulated that the testimony of John T. Lytle, the plaintiff, in his own behalf, and of George W. Brackenridge, a witness on behalf of the plaintiff, taken pursuant to notices in the above-entitled action, may be taken down by a stenographer; that the witnesses need not sign the depositions until transcribed; that a copy of the depositions shall be furnished to the attorney for the defendant; that filing thereof shall be waived; that the stenographer's fees be taxed as costs, not exceeding commissioner's fees; such testimony, however, to be subject to exception (except as to form), to be taken on the trial. It is further—

Stipulated that any documentary evidence referred to in the testimony of either of the witnesses need not be annexed to the deposi

tions until after the same are sworn to. Either party may read such depositions on the trial.

New York, May 16, 1887.

SHEARMAN & STERLING,
Plaintiff's Attorneys.
H. V. HOWLAND,
Defendant's Attorney.

149 *Deposition of John T. Lytle.*

Circuit Court of the United States for the Northern District of New York.

JOHN T. LYTLE
against
THE TOWN OF LANSING.

Deposition of John T. Lytle, a witness produced, sworn, and examined pursuant to the annexed stipulation, in the city of New York, on the 16th and 18th days of May, 1887.

Mr. E. P. Wheeler and Messrs. Shearman & Sterling, for the plaintiff; Mr. H. V. Howland, for the defendant.

Direct examination by Mr. WHEELER:

Q. State your name, residence, age, and occupation.

A. John T. Lytle; Medina county, Texas; forty-two; stock-raising.

Q. How long have you been in the business of stock-raising?

A. I have been engaged in it since the summer of 1860.

Q. Where?

A. In western Texas, in Medina and adjoining counties.

Q. You are the plaintiff in this suit against The Town of Lansing?

A. Yes, sir.

Q. Now, before May, 1884, had you acquired any tract of land on the Frio river?

A. Yes, sir.

Q. How extensive was that tract?

A. Before May, 1884, about 40,000 acres.

150 Q. About what was the length of the tract?

A. The tract has a river front of about 15 miles.

Q. What was this land used for?

A. Grazing purposes.

Q. State whether or not you had cattle on it in May, 1884.

A. Yes, sir.

Q. About how many?

A. Well, in May, 1884, I could not tell exactly how many, but during the winter we used that pasture to gather in; we generally wintered in that pasture; all of them would be taken out in March and April and driven North, but how many at the time you mention I cannot say; probably 2,500.

Q. Are you acquainted with the value of land in that part of the State of Texas?

A. Yes, sir.

Q. Were you so acquainted in 1884?

A. Yes, sir.

Q. Had you bought such property before that?

A. Yes, sir; I bought property outside of this.

Q. Property of a similar character?

A. Yes, sir.

Q. And sold it?

A. No; I have never sold it.

Q. Had you known of purchases and sales by others?

A. Yes, sir.

Q. What, in your judgment, was the value of this tract of land which you have described on the Frio river in the spring of 1884?

A. That tract of land was worth fully four dollars an acre, improved as it is.

Q. What improvements were there on it?

A. It was fenced and divided up into pastures suitable for cattle—all necessary means for the successful care of cattle.

Q. What interest had you in it?

A. In May, 1884, a half interest.

Q. Who was interested with you?

A. Mr. McDaniel.

151 Q. Did you know in May, 1884, George W. Brackenridge?

A. Yes, sir.

Q. Who is he?

A. He was president of the San Antonio National bank.

Q. Where does he reside?

A. He resides in San Antonio.

Q. How long had you known him before the spring of 1884?

A. I have been intimately acquainted with him since 1871.

Q. What was his business during that time?

A. Banking business principally. He has other business.

Q. State whether or not in the spring of 1884 you had any negotiation with him in regard to the purchase of the bonds mentioned in the complaint; and, if so, what was it?

A. I bought these bonds from him some time in the spring of 1884.

Q. State the transaction between you and him—what he said about the bonds and what was said about the price, and what you paid for them.

A. Merely that he would buy a third interest in my Frio property and pay me in bonds. I would take the bonds in payment. He would pay me $75,000 worth of bonds. He said the bonds were good. Knowing Mr. Brackenridge as I did and the business transactions I had with him at different times, I never made any inquiry about the bonds.

Q. State whether or not at the time spoken of—that is to say, in the spring of 1884—he delivered you the bonds mentioned in the complaint.

A. Yes, sir.

Q. Where did he so deliver them?

A. The bonds were delivered to me at the San Antonio National bank in Texas.

Q. What did you pay him at the time, if anything, for the bonds?

A. I gave him a receipt of a third interest in this property.

152 Q. Do you know where that is now?

A. No, sir.

Q. That was in writing?

A. Yes, sir; the bonds were purchased some time prior to that.

Q. When did you make the agreement with him?

A. It was prior to the time that they were delivered to me.

Q. How long before, do you remember?

A. I do not, sir; but I think at least two months—six weeks, probably.

Q. State whether or not after the bonds mentioned in the complaint were delivered to you you cut any coupons from them.

A. Yes, sir.

Q. How long after that?

A. I could not say.

Q. About how long?

A. As well as I remember, the coupons matured some time in July, and those were the first coupons I cut off. I cut them in time for presentation for payment.

Q. Look at the 75 papers which I now show you, numbered from 1 to 75, inclusive, for $35 each, due July 1, 1884, and state whether those were the coupons you cut off as you just testified.

A. Those certainly are the coupons.

Q. What did you do with those when you cut them off?

A. I forwarded them to Messrs. Shearman & Sterling for presentation and collection.

Q. Look at the coupons which I now show you, being numbered from 1 to 75, inclusive, falling due 1st of January, 1885, and state whether you cut those off; and, if not, if you know by whom they were cut off.

A. I cut those myself.

Q. What did you do with them?

A. I forwarded them to the same parties for collection.

Q. State whether or not these two sets of coupons were on the bonds at the time you received them from Mr. Brackenridge.

A. Yes, sir.

153 Q. Were there any other coupons attached to the bonds at that time of prior date to the 1st of July, 1884?

A. There were not.

Q. State how, if at all, the one-third interest in this property on the Frio river, which you have described, was subsequently conveyed to Mr. Breckenridge.

A. That property was conveyed to the San Antonio Ranch Company and one-third of the stock issued to Mr. Brackenridge. I will state that the San Antonio Ranch Co. was a company in which Mr.

Brackenridge, Mr. McDaniel, and myself were interested, and was formed prior to that time. We had cattle interests in the West before May, 1884.

Q. What position did Mr. Brackenridge hold in the company?

A. He was president.

Q. Was he in 1884?

A. It was known as Lytle & Co. for awhile and then organized into a stock company. The San Antonio Ranch Company at that time was not organized.

Witness looks at the certified copy of the charter of the San Antonio Ranch Company and says this company was formed January 28, 1885.

Q. Who held the title to this tract of land that you have spoken of on the Frio river before the formation of the San Antonio Ranch Company?

A. The title was in the name of Lytle & McDaniel, one-third interest, however, belonging to Mr. Brackenridge.

Q. When this ranch company was formed to whom was the stock issued?

A. It was issued to Mr. Brackenridge, Mr. McDaniel, and myself.

Counsel for the defendant objects to the testimony as to the issue of stock and also objects to witnesses stating orally the title to this property.

154 Q. Have any dividends been paid on the stock of this company since its formation?

A. Yes.

Q. Who has drawn those dividends?

A. Mr. Brackenridge, Mr. McDaniel, and myself.

Q. State whether or not at the time the bonds were delivered to you by Mr. Brackenridge or at any time before that you had any notice or information of any kind that there was any defense to the bonds or that they were not valid bonds, or anything to that effect.

A. There was none up to the time of the delivery of the bonds.

Q. State when it was that you first learned that the town of Lansing claimed to have a defense to the bonds.

A. I do not remember the date, but it was about the time that I cut off the first coupons.

Q. How long was it from the time that you cut off the first coupons and the bonds were delivered to you by Mr. Brackenridge and you gave him this receipt?

A. I think it was about six weeks or two months, to the best of my recollection.

Q. State whether or not after the bonds were delivered to you and you gave to Mr. Brackenridge this paper to which you referred, specifying his interest in the property, there was any understanding or agreement between you and him of any sort that he still retain an interest in the bonds.

A. No, sir; he had no interest in the bonds.

Cross-examination by Mr. HOWLAND:

Q. What is your proper address?

A. My post-office address is Lytle, which is in Atascosa county, about fifty yards from Medina county. Lytle is on the railroad. The ranch I live on is a different ranch from the Frio ranch; that is about thirty miles away from the one I live on.

Q. What is the distance from the place where you live to this place?

A. About 72 hours' ride.

155 Q. How many miles—two thousand miles?

A. I think it would be fully that.

Q. When did you come here?

A. I arrived here a week ago yesterday.

Q. Did you come to give your testimony in this case?

A. No, sir.

Q. Was that any part of your object?

A. No, sir.

Q. Did Mr. Brackenridge come with you?

A. Yes, sir.

Q. Do you know what his business was or did he come at your request?

A. I won't say positively, but we did not come here on this business.

Q. Did he come at your request?

A. He did not.

Q. He came with you?

A. We came together. I overtook him at New Orleans. We had other business matters here together in connection with this San Antonio Ranch Company.

Q. Do you design to return together?

A. If it is convenient.

Q. That is your intention?

A. Yes, sir.

Q. Did anybody else come with you?

A. No, sir; other gentlemen have come here since on the same business that we are on.

Q. The business that you came on has reference to your ranch?

A. Reference to the sale.

Q. In which you are jointly interested?

A. Yes, sir.

Q. Are you and Mr. Brackenridge jointly interested in any other business matters or enterprise aside from these lands?

A. No, sir; well, yes; we had some coal interests together.

Q. How long have you had coal interests together?

A. I think about three or four years.

156 Q. What is that interest?

A. Well, it did not amount to anything.

Q. Coal-mining interest?

A. Yes, sir.

Q. You still have that interest?

A. Yes, sir; if there is any; we still have it together.
Q. Where?
A. In Maverick county, Texas.
Q. Are you relatives by marriage or otherwise?
A. No, sir.
Q. What other interests have you together or have you had together?
A. We have none.
Q. Never had any?
A. Only in the usual routine of banking business.
Q. You have done your banking business with him generally?
A. Yes, sir.
Q. How long a time?
A. Since the fall of 1871.
Q. And that has been pretty large?
A. Yes, sir.
Q. Can you think of any other business or social relations that you have with him?
A. Our ordinary relations are very pleasant.
Q. You have been great friends for a long time?
A. Yes, sir.
Q. Very confidential friends; helping one another?
A. Yes, sir; the confidence has all been on his part. He lent me a great deal of money in my business transactions. I paid him for it.
Q. I should say he was not only your banker but your financial helper?
A. Yes, sir; he lent me large sums of money in the business that I was engaged in.
Q. Did he help you to business contracts?
A. No, sir. When I needed any money in my business or in making contracts he accommodated me.
Q. Did you consult him a good deal in regard to your business matters?
157 A. We sometime- had ordinary consultations. I did consult him more or less on some occasions in regard to business matters.
Q. Did he also consult with you in regard to his business matters in his own behalf?
A. No, sir. If he thought I knew about certain persons he might ask me.
Q. Was it not a good deal your habit when either of you were entering into business matters to confer together and compare your judgments and talk the matter over?
A. No, sir.
Q. You knew his business pretty well, did you not?
A. No, sir. Of course I knew of the bank, but as to being familiar with the exact position of the bank, of course I did not know.
Q. These friendly relations are about the same up to this time, are they not?
A. Yes, sir.

Q. When was the first that you knew anything about his having these 75 town of Lansing bonds—that you knew about his having anything to do with them?

A. When the bonds were delivered to me.

Q. Had there never been anything said to you about them before?

A. Not about these particular bonds.

Q. When was the first that he ever told you or you ever knew of his having them?

A. When he made the trade.

Q. And that was from him?

A. Yes, sir.

Q. Never had heard it from anybody else?

A. No, sir.

Q. Where were you when he told you about having these bonds?

A. At his house.

Q. Do you remember upon what business you were there?

A. I went to stay overnight.

Q. You went to make a friendly visit?

A. Yes, sir.

158 Q. And then he told you what? What did he tell you about the bonds?

A. He said that he had so many bonds—he said he had $75,000 bonds that he would give me for a third interest in my ranch—in the Frio ranch. He said the bonds were good. I told him all right; I would sell him the third interest. He said all right; consider it a trade.

Q. What else was said?

A. That was all that was said.

Q. Who was present at that time?

A. There was no one present.

Q. Did he produce the bonds?

A. No, sir; not then.

Q. You had never seen them?

A. I had not seen them.

Q. You have told all that he said about them?

A. Yes, sir.

Q. Was there anything said on that occasion about the value of the ranch or the interest in it?

A. No, sir; he knew the ranch and knew what I paid for it.

Q. What was said about the value?

A. Nothing, to the best of my recollection.

Q. Or anything said about the amount of interest in it?

A. Not at that time; no, sir.

Q. Was anything said about the interest that he was to have?

A. As I said, he bought a third interest.

Q. That was all that was said about that?

A. Yes, sir.

Q. That is all that took place at that time?

A. Yes, sir.

Q. How long was that before you consummated the bargain?

A. The trade was consummated then.

Q. There was no writing?
A. No, sir.
Q. How long before that took place?
A. To the best of my recollection, I think it was probably between ten to fifteen days.
159 Q. After this first conversation?
A. Yes, sir.
Q. I believe you said there was some paper made.
A. Yes, sir.
Q. What was the paper—a receipt or what?
A. I gave him a receipt.
Q. Who drew it?
A. I drew it myself.
Q. It has been lost?
A. I believe he has it—of course he has it.
Q. Do you remember how it read?
A. I know in substance.
Q. Well, how?
A. Received of George W. Brackenridge $75,000 in bonds in payment for one-third interest in the Frio ranch.
Q. Did you sign it?
A. Yes, sir.
Q. Were the bonds delivered then?
A. Yes, sir.
Q. Where were you at that time?
A. At the San Antonio National bank.
Q. Anybody else present?
A. The assistant cashier came in.
Q. Anybody present during your conversation?
A. There might have been somebody present in the room.
Q. Anybody that you knew?
A. No, sir.
Q. Did he produce the bonds then?
A. He had the bonds transferred to my credit.
Q. Did he actually produce the bonds?
A. No, sir.
Q. You say they were transferred to your credit on the books?
A. The assistant cashier was called and Mr. Brackenridge told him to place those bonds to my credit, subject to my order.
Q. What kind of an entry did he tell him to make?
A. He just instructed him that those were my bonds.
160 Q. What kind of an entry did the cashier make?
A. I do not suppose the bonds appeared upon the books. He simply told him that those bonds were mine; that they were for me.
Q. Did he ask him to make any entry?
A. No, sir.
Q. Or any memorandum?
A. No, sir.
Q. What did he tell him? Give me his language.

A. He told him, as near as I can remember the words, "Those bonds are Lytle's, subject to his order."

Q. Is that all that was done?

A. Yes, sir.

Q. You did not see the bonds on that occasion?

A. No, sir.

Q. You did not know where they were?

A. No, sir.

Q. You delivered the paper?

A. Yes, sir.

Q. When did you see those bonds for the first time?

A. Probably in two or three hours.

Q. Was it the same day?

A. Yes, sir.

Q. How were they given to you?

A. The cashier delivered them to me.

Q. Was Mr. Brackenridge present when the bonds were delivered to you?

A. I think he was.

Q. Do you remember positively?

A. If he was not present at the moment, he was in and out of the room.

Q. Do you remember whether he was in the room—are you positive?

A. I am positive he was present when I opened the bonds.

Q. What bonds were delivered to you?

A. Bonds of the town of Lansing.

Q. How many?

A. Seventy-five.

Q. In thousand-dollar bonds—$75,000 bonds?

A. Yes, sir.

161 Q. Were there coupons on them?

A. Yes, sir.

Q. Were there any matured coupons on?

A. No, sir.

Q. You say he was present at the time of their delivery to you. Was there anything said between you at that time?

A. No, sir; there was nothing said. He only said, You had better send your coupons on for collection.

Q. What else?

A. I do not think there was anything else said.

Q. The bonds were delivered to you at that time?

A. Yes, sir.

Q. What did you do with the bonds?

A. I deposited them in the San Antonio National bank.

Q. Did you deliver them over?

A. Yes, sir.

Q. Then you deposited them in his bank?

A. Yes, sir.

Q. Gave them to him or his cashier?

A. I gave them to the cashier or some one in the bank.

Q. What directions did you give to him?
A. I told him to take care of them for me.
Q. They remained there?
A. Yes, sir.
Q. And have ever since?
A. They were in the bank most of the time.
Q. Have they not been there all the time except when you had them for the purpose of cutting off the coupons?
A. I have not seen the bonds since that time—since I cut off the coupons.
Q. But the custody of the bonds has been there in the bank ever since?
A. The last time I saw them was January, 1885.
Q. Was that when you cut the coupons off?
A. Yes, sir.
Q. What did you do with them when you got through cutting the coupons?
162 A. I left them in the bank.
Q. Did they remain in the bank, so far as you know?
A. Yes, sir.
Q. Did you send the coupons, or did Mr. Brackenridge?
A. I did.
Q. How?
A. By letter.
Q. To Messrs. Shearman & Sterling?
A. Yes, sir.
Q. For collection?
A. Yes, sir.
Q. Did Mr. Brackenridge tell you whom to send them to?
A. I asked Mr. Brackenridge in regard to it.
Q. What did you ask him?
A. I asked him who would be good parties to send those coupons to. He named Shearman & Sterling.
Q. Was that when you cut the first or second coupons, or did you cut them all at the same time?
A. I cut them at different times.
Q. And you asked him when you cut the first?
A. Yes, sir.
Q. Did you know anything about the firm of Shearman & Sterling—had you business with them?
A. No, sir.
Q. No acquaintance?
A. No, sir.
Q. You relied solely upon what Mr. Brackenridge told you?
A. Yes, sir.
Q. Did you look to see if the bonds were sealed?
A. No, sir.
Q. You could not say whether they were sealed or not?
A. No, sir.
Q. Have you never examined them to see whether they bear seals or not?

A. No, sir; I never have examined them.
Q. You did not examine them at that time or since?
A. No, sir.
163 Q. Have you ever authorized or directed Mr. Brackenridge to send those bonds here to your attorneys?
A. I am satisfied that I gave directions to Shearman & Sterling to proceed in any way they thought best. The bank had been authorized to deliver the bonds to them.
Q. Have you ever directed anything of that kind?
A. I have directed provided they were needed.
Q. Did you notice whether the bonds had been signed by anybody or not?
A. I examined the bonds.
Q. Did you examine them to see if they were signed?
A. Yes, sir.
Q. Then why cannot you say whether they have been sealed?
A. I have no recollection of the seal.
Q. Have you cut any coupons from the bonds since the 1885 coupons?
A. My recollection is that I never cut but two sets of coupons.
Q. You cut none since?
A. I have no recollection.
Q. You have not seen the bonds since?
A. No, sir.
Q. Have you disposed of the bonds?
A. No, sir.
Q. They are there yet, as far as you know, with the coupons on?
A. Yes, sir.
Q. When was it that you first heard there was any trouble about these bonds or anything claimed by the town of Lansing?
A. I do not recollect the exact time; it was some time during the latter part of summer or fall of 1884.
Q. Cannot you state when?
A. In the fall of 1884.
Q. Who told you about it?
A. My recollection is that I received a letter from my attorneys here.
Q. Informing you of some difficulty?
A. Yes, sir.
164 Q. Did you hear it from anybody else?
A. Not up to that time.
Q. Did you go to Mr. Brackenridge after you received that letter?
A. Yes, sir.
Q. To talk with him about it?
A. Yes, sir.
Q. He then told you that he had a suit pending about some of the coupons?
A. Yes, sir.
Q. Did he tell you how many and what coupons?
A. No, sir.

Q. Go on and tell your conversation with him. Could you give it pretty accurately?

A. No, sir.

Q. Did you have any hard words?

A. No, sir.

Q. Anything to the effect that he would see you all right?

A. No, sir.

Q. Is that all the conversation you ever had with him in regard to the defense of the bonds?

A. We had other conversations.

Q. Anything that amounted to any more than that?

A. No, sir.

Q. If I understand you rightly, you and Mr. Brackenridge and Mr. McDaniel were concerned together as partners, were you not, in the ranch business, before this trade of the bonds?

A. We had interests.

Q. Joint interests?

A. Yes, sir.

Q. And you owned this ranch together?

A. Yes, sir.

Q. What interest did he own in the ranch?

A. He had no interest in the Frio ranch.

Q. Did he have any interest with you?

A. Yes, sir; in the ranch out West.

Q. What was it called?

A. It was known as Lytle & Co.

165 Q. Where was that?

A. In Maverick county.

Q. How extensive a ranch was that?

A. At that time about $180,000.

Q. How long had you been interested in that ranch together?

A. I think the cattle were purchased on the 22d day of February, to the best of my recollection, 1883.

Q. Did you have an interest in the ranch?

A. We call a cattle ranch there—he had no interest in the lands, while he had in the cattle. His cattle were on the ranch with mine.

Q. This second ranch you speak of, who held the title to that?

A. Lytle & Co.

Q. What kind of a title did you hold to that—did you have any title except possession?

A. We had it by bill of sale.

Q. Explain how you got the title or right of possession to your ranches. Take this Frio ranch, what kind of a title did you have?

A. We had warranty deeds from the parties that we purchased from.

Q. How long ago?

A. That ranch was purchased from Slaughter, Crouch & Thompson, either in the spring of 1880 or 1881. I think it was 1881; the deed will show it.

Q. The deed came from them to you and Mr. McDaniel?

A. Yes, sir.
Q. Recorded where?
A. In Frio county. The clerk's office at that time was at Frio town; it is now Pearsall.
Q. What was the consideration?
A. Part of that was bought from other parties, but the first purchase was all from Slaughter, Crouch & Thompson, either in the spring of 1880 or 1881.
Q. Take all this ranch property that you gave him an interest in, how much consideration?
A. The property cost us, cash, without improvements, about $66,000.
166 Q. Who paid for it?
A. Lytle & McDaniel.
Q. Did Mr. Brackenridge pay for it?
A. No, sir.
Q. As I understand you, you transferred to him an interest?
A. A one-third interest.
Q. Gave him a deed?
A. We transferred a one-third interest to Mr. Brackenridge and made a deed to the San Antonio Ranch Co.
Q. You never deeded anything to him?
A. No, sir.
Q. You afterwards formed a stock company or corporation?
A. Yes, sir.
Q. And transferred the whole of this ranch to that company?
A. Yes, sir.
Q. Since that time who has run that ranch?
A. I have.
Q. And McDaniel?
A. Until within the last two years he had charge of the business at home, under my supervision.
Q. What position did you occupy in the company?
A. General manager.
Q. And received all the money, and paid money, and kept the general run of all the business?
A. Yes, sir.
Q. Does Brackenridge have anything to do with it?
A. Only as a director.
Q. Who is the treasurer?
A. Mr. McDaniel.
Q. Does he do anything except take care of the finances? Are the deposits made in his name?
A. In the name of the San Antonio Ranch Company.
Q. You did all the work?
A. Yes, sir.
Q. What is the amount of the stock of that company?
A. $500,000.
167 Q. What does its property consist of?
A. It consists of land, cattle, and horses. We have other cattle, lands, and horses besides the Frio ranch.

Q. That is all in the stock company?
A. Yes, sir.
Q. What amount of stock do you hold in this corporation?
A. I hold over one-third.
Q. Who owns the rest?
A. Brackenridge has one-third of all the stock, less
146,666 $60,000. He has one-third of $440,000. The capital stock is $500,000 less $60,000, which is $440,000. Brackenridge has one-third of $440,000.
Q. Why is that $60,000 taken out?
A. That is in the matter of purchase of property that belonged to Lytle and McDaniel before the formation of this company.
Q. In which Brackenridge had no interest?
A. Yes, sir.
Q. Nobody else owns any of that stock? You never have sold any nor put it upon the market?
A. No, sir; not until within a few days.
Q. Did you say there had been dividends?
A. Yes, sir.
Q. What amount?
A. We declared one dividend of three per cent. on the capital stock.
Q. When?
A. I think it was about December 1, 1885, or the fall of 1885.
Q. None has been declared since?
A. No, sir.
Q. No transfers of the property?
A. No, sir.
Q. Do you live on it?
A. No, sir.
Q. Are you a married man?
A. No, sir.
Q. You live near it?
A. I live about thirty miles from it, on my other ranch.
168 Q. Up to this time have you ever ascertained or tried to ascertain the particular defenses that the town of Lansing made to these bonds from Mr. Brackenridge; have you ever tried to ascertain from him?
A. I have through correspondence with my attorneys here.
Q. From Mr. Brackenridge?
A. We have talked the matter over, as I have said, at different times. I expect he explained it all to me.
Q. Tell what you remember.
A. I do not remember.
Q. You have stated the whole thing?
A. Yes, sir.
Q. You speak of your estimated valuation of that property. Do you know of any land in that neighborhood being sold for that price or for any other?
A. I know of some being sold.
Q. How long ago?

A. I know of lands for sale there in 1884.
Q. How near to your land?
A. Twenty-five miles.
Q. What was the condition of that land as to improvements?
A. It was nothing to compare with ours.
Q. Was it occupied?
A. It was occupied, but not improved.
Q. What do you mean by improvements?
A. There was simply on those lands small ranchmen who had squatted. That is what I mean by being occupied.
Q. The ranchmen are men that are hired, are they not?
A. A ranchman is a man who has a regularly organized ranch and owns land and cattle. There was some squatters on these lands.
Q. How did that improve the land?
A. I say it was not improved. You asked me if they were occupied, and I was trying to explain how they were occupied.
Q. What improvements were on your land that were not upon this land that you know of being sold?
169 A. Our lands were fenced and divided into pastures at considerable expense.
Q. How much expense?
A. I think there were probably one hundred miles of fence.
Q. How much expense?
A. The fences were there at the time.
Q. Had you ever had any experience in bonds—in dealing in municipal bonds?
A. No, sir.
Q. Had you ever dealt in any securities—bought and sold securities?
A. Never had.
Q. Never been in banking business?
A. No, sir.
Q. Your business has been attending to ranches, &c.?
A. Yes, sir.
Q. Had you any information in regard to these municipal bonds being safe securities to buy except what Mr. Brackinridge told you?
A. Only in a general way. Do you mean these particular bonds?
Q. I mean bonds generally.
A. I saw them quoted on the market, but I took no particular interest.
Q. Were these bonds quoted on the market?
A. No, sir; not to my knowledge.
Q. Did Mr. Brackinridge ever give you any history of these bonds, how they came down into Texas and been bought and sold by different persons?
A. He told me about his having bought them.
Q. But did he say who he bought them of?
A. I do not remember the name. I did not feel much interested in it. It is so long ago that it has escaped my mind.

Q. You could not state that you knew bonds were sometimes insecure and litigated a good deal?

A. I knew that such things existed.

Q. You knew that there was a great deal of litigation in regard to town bonds?

170 A. I say I knew that such things existed.

Q. Did you have anything to do with it?

A. No, sir.

Q. Did Mr. Brackenridge?

A. I do not know.

Q. Did you not know about bonds from other States being litigated?

A. I knew about it by newspaper reports.

Q. You saw a good many reports?

A. Yes, sir.

Q. You read the newspapers?

A. Yes, sir.

Q. For how long a time have you been in the habit of reading about bonds?

A. I cannot answer that.

Q. You can tell whether you have read a good deal about it or not.

A. I have read about it, but as to what extent I cannot say.

Q. Have you read enough about it to form an opinion that there was some risk, or that men would be liable to have lawsuits over them?

A. I do not think that the information I had would post me to that extent, because I took no interest in those things.

Q. Had you any acquaintance with the town of Lansing or anybody in it?

A. No, sir.

Q. Did you notice the date of those bonds?

A. I may have noticed it.

Q. Did you not look to see when they became due?

A. Yes, sir.

Q. When was that?

A. I do not remember.

Q. You did not look to see when they were dated or how long they had been running?

A. I knew that they had to run several years.

Q. What did you regard that you allowed or paid for these bonds—how much in value?

A. I think I paid fully $50,000 for them.

171 Q. That is, counting your property at the price you have named?

A. Yes, sir. I would not have sold it for less than that.

Q. The bonds had coupons nearly due for one-half year's interest upon them at the time?

A. The coupons matured July 1.

Q. There were $75,000 worth of bonds?

A. Yes, sir.

Q. Were there any remarks made between you and Mr. Brackinridge in regard to the amount of those bonds—that he was giving you $75,000 in good securities for $50,000 worth of Texas property? Anything said on that subject?

A. Nothing said.

Q. He made no complaint?

A. He just said that he would give me those bonds.

Q. He did not say, Now, here I am giving you $75,000 of good bonds for $50,000 worth of Texas property?

A. He did not say anything in regard to the value of the property.

Q. Did he not banter at all?

A. No, sir.

Q. You did not try to get any more for your property?

A. I took the bonds for the property.

Q. And you knew at that time that you were getting $75,000 worth of good securities for $50,000 worth of Texas ranche property?

A. I considered the securities good.

Q. You thought you were getting $75,000 for what you say was worth $50,000?

A. The bonds were not cash.

Q. Are not good securities about as good as cash?

A. You cannot realize money in Texas.

Q. Did you not regard those bonds worth par?

A. I regarded the bonds as worth what I was giving for them.

Q. Did you not regard them par?

A. I stated that I regarded them as being worth what I gave for them.

172 Q. That, you say, would be $50,000?

A. I say that the property was worth at least that at that time.

Q. Cannot you give any reason why you did not regard them as being worth more?

A. I cannot.

Q. Was it talked between you and Mr. Brackenridge at the time that the property was worth $50,000?

A. I answered that question.

Q. Did you pay Mr. Brackenridge's expenses here?

A. No, sir.

Q. Did he yours?

A. No, sir.

Q. Each paid your own?

A. Yes, sir.

Q. Have you read over the testimony that was given by Mr. Brackenridge in the deposition that he made in his own cause in Texas?

A. I have glanced it over.

Q. When?

A. I think a short time after he gave it; a month or so.

Q. Where were you?

A. I read it over in my ranch, as well as I remember.
Q. Did you ask him what he gave for those bonds?
A. No, sir.
Q. Nor he never told you?
A. I have no recollection.
Q. Did you never compare notes—that is, talk it over with him about what he regarded that he got for those bonds?
A. I have no recollection.
Q. You remember reading over his testimony?
A. I glanced over it.
Q. As to what valuation he put upon the property that he got for those bonds?
A. I do not remember.
Q. He says, "I sold or traded for a third interest in what is known as the Frio ranch. The ranch embraces the cattle and stock." Did the ranch embrace the cattle and stock?
173 A. He might have understood it that way.
Q. Did you understand it that way?
A. I did not.
Q. He says, "I think it was worth $200,000." Did you read that over?
A. No, sir.

Re-examined by Mr. WHEELER:

Q. Did Mr. Brackenridge know of your purchase of the Frio ranch at the time or about the time you made it?
A. Yes, sir.
Q. State whether or not he was your partner in that ranch.
A. No, sir.
Q. In what bank did you keep your bank account of the firm of Lytle & McDaniel?
A. San Antonia National bank.
Q. How long had you kept it there?
A. We had been depositing there since the fall of 1871.
Q. State whether or not Mr. Brackenridge knew of the improvements you had made on the ranch since you bought it.
A. Only through what we told him.
Q. What had you told him in regard to the improvements on the ranch?
A. We put on about $13,000 worth of improvements.
Q. Had there ever been any talk between you and him about his buying an interest in the ranch before this time?
A. Yes, sir.
Q. When was it that you first began to talk about his buying an interest in the Frio ranch?
A. I think it was shortly after we purchased it.
Q. Had anything been said between you in regard to the business, their being profitable or otherwise, before the spring of 1884?
A. Yes, sir.
174 Q. What?

A. He knew that the business was profitable.

Q. When you in your cross-examination put the valuation of $50,000 on the one-third interest that you sold to him in exchange for these bonds, on what basis did you make that valuation?

A. I based the valuation on the property being worth at least $150,000.

Q. State whether or not you put that as a cash basis or otherwise.

A. A cash basis.

Q. You were asked on cross-examination with regard to what you had read as to town bonds and as to whether or not you had heard that any of them had been litigated. What was the credit in Texas of the State of New York and the various securities that have been issued by the municipalities of that State at the time of that purchase?

Objected to.

Q. What was your information about the credit of the State of New York and the various bonds that had been issued by its towns and municipalities?

Objected to.

A. It was good.

Q. Did you have any particular information in regard to municipal bonds in the State of New York?

A. No particular information. I mean to say that what information I had of that class of securities, if I had any, was that it was good.

Recross-examination:

Q. Did you have any?

A. I had such information as I got from the papers.

Q. In regard to the State of New York?

A. I traveled all over this Western country.

175 Q. Did you read in regard to contests over the town bonds in the State of New York?

A. No, sir.

Q. What did you read about them?

A. I say that I have noticed in a general way.

Q. Did you ever notice anything in regard to the credit of those bonds?

A. I have noticed in newspapers.

Q. What did you notice?

A. Quoted on the market.

Q. Town bonds quoted on the market? What market?

A. Spoke of it in a general way.

Q. Town bonds?

A. Yes, sir.

Q. Did you ever read of any town bonds being quoted?

A. Spoken of as securities.

Q. Do you remember whether they were quoted on the market?
A. I do not.
Q. It amounts to just this, that you did not know anything about the credit that was given in regard to those town bonds—you knew nothing against or for them?
A. I say that my information never influenced me.
Q. I suppose you mean—when you speak of your estimate of the property as $150,000 cash value you mean that it was really worth what it ought to sell for?
A. That it was worth cash.
Q. How do you think that Mr. Brackenridge knew that your business was profitable?
A. He knew it from the amount of business contracted through his bank by the different stockmen throughout the country.
Q. He knew what your business was?
A. Yes, sir.
Q. You say the dividend made was 3 % on $500,000?
A. It amounted to about that.

176 By Mr. WHEELER:

Q. Of what State are you a citizen?
A. Of the State of Texas.
Q. When do you expect to return to Texas?
A. Within two or three days.

The two sets of coupons referred to by the witness, being the 75 coupons falling due July 1, 1884, and the 75 coupons falling due January 1, 1885, were produced and marked by the notary for identification C. F. H.

The 75 bonds of the town of Lansing referred to by the witness and numbered from 1 to 75, both inclusive, were produced by the plaintiff's attorneys and identified by the witness as being the bonds delivered to him by G. W. Brackenridge, as mentioned in his testimony. The bonds are to be produced on the trial.

JNO. T. LYTLE.

Deposition taken, reduced to writing, and by the witness subscribed and sworn to, the same having previously been read over by him, this 18th day of May, 1887, before me—

CHAS. F. HALSTED,
Notary Public, Kings Co.

[SEAL.]

Cert. in N. Y. Co.

177 *Deposition of George W. Brackenridge.*

United States Circuit Court, Northern District of New York.

JOHN T. LYTLE
against
THE TOWN OF LANSING.

NEW YORK, *May* 17, 1887.

Deposition of George W. Brackenridge, a witness produced, sworn, and examined on behalf of the plaintiff, pursuant to the annexed stipulation.

Mr. Wheeler appeared for plaintiff; Mr. Howland appeared for defendant.

GEORGE W. BRACKENRIDGE, called on behalf of the plaintiff, testified as follows:

By Mr. WHEELER:

Q. What is your age, residence, and occupation?

A. I am 55 years of age; my residence is San Antonio, Texas, and my business is that of banker.

Q. Are you president of any national bank?

A. Yes, sir; of the San Antonio National bank.

Q. Do you know John T. Lytle?

A. Yes, sir; I do.

Q. How long have you known him?

A. I suppose twenty years. I think nineteen or twenty.

Q. What is his business?

A. Stockman—cattleman.

Q. What knowledge have you as to his business during the last four or five years?

A. Only as a banker; he keeps two bank accounts.

178 Q. Have you had any information during that time of a ranch that he was interested in?

A. Yes; I know he owns three or four ranches.

Q. Did you, prior to May, 1884, know of his having an interest in the Frio ranch?

A. Yes, sir; I think he had it. I do not know the exact time. I know about the time when he purchased it.

Q. Did you, before the spring of 1884, have any talk with him in regard to your buying any interest in that ranch?

A. I am not sure as to time, but I wanted an interest in it; it was one of the best ranches in the country. I had had a cattle interest but no real-estate interest.

Q. Did you communicate that wish of yours to him?

A. I did at one time. I do not remember dates. I spoke to him frequently about it, indirectly. We had a large cattle interest, but

no ranch property. I wanted to obtain some real estate upon which the ranching could be done.

Q. Did you make him any offer to purchase an interest in that ranch and what took place between you on the subject?

A. I told him that it would be better for me to take an interest in the ranch—a one-third interest.

Q. What offer did you make him to pay for that interest?

A. I offered to give him these Lansing bonds. I told him I did not want to pay cash for it, but I would give the Lansing bonds. I told him there were $75,000 of the bonds; that I considered them good and worth as much as his property.

Q. What did he say to that?

A. He finally accepted the proposition—said, All right, we will do it. I think the final settlement of that was made at my house.

Q. Did you, at any time, deliver the bonds to him; and, if so, how soon after this conversation?

A. I think I was starting to New York next morning, and that on my return, some few days afterwards, perhaps, I delivered
179 the bonds to him—rather, I told the assistant cashier, who has charge of the bonds and had them in the bank vaults, for him to turn them over; that they were now the property of John T. Lytle, and hold them subject to his order.

Q. Did he at that time give you a memorandum of the transaction?

A. Yes; we took a statement in writing at that time.

Q. Have you that with you?

A. I have not.

Q. Will you produce it and annex it to your deposition?

A. I think I can. I have not looked for it, but it was executed. I have the possession of it, as far as I can remember. I think I can find it.

Q. What were the contents of that paper?

Objected to. Question and answer to be stricken out if witness is able to find paper.

A. I think it is in substance, That I hereby sell to George W. Brackenridge one-third interest in the Frio ranch. It is somewhat longer than that, but I do not know it exactly.

Q. Was anything said about the bonds?

A. I am not sure. I know the statement was longer.

Q. Do you remember how long it was that you made this delivery of the bonds and received this paper from Lytle before the coupons that were due on the 1st of July, 1884, became due?

A. I suppose it must have been a month or two.

Q. State whether or not there were any overdue coupons on the bonds when you delivered them to him.

A. There were not; no overdue coupons.

Q. Have you stated all the conversation between you and Mr. Lytle in regard to the purchase of the interest in the Frio ranch, in regard to the bonds, that you remember?

180 A. Everything, without any equivocation, so far as I can remember. There was much said, but I have given the substance as near as I can remember.

Q. State whether or not anything was said between you and him as to your retaining any interest in the bonds.

A. Nothing was said.

Q. State whether or not you have any interest in the bonds.

Objected to as conclusion of law.

A. I have not.

Q. How long had you owned these bonds before you sold them to Mr. Lytle?

A. I do not remember.

Q. About how long?

A. A year or two, I think. I do not remember.

Q. Were you acquainted with the value of property similar to this Frio ranch in that part of the State of Texas?

A. Yes, sir.

Q. Had you known of sales and purchases of such property in 1884 and prior thereto?

A. Yes, sir; about that time.

Q. What, in your judgment, was the value of this one-third interest in the Frio ranch at the time of the delivery of the bonds?

A. I intended to purchase not only the land, but the cattle. The ranch embraced not only land. The expression means land and cattle. Land in that neighborhood had sold at $4 and $5 an acre. There was land selling all the way from $1.50 an acre to $5 an acre. That was land such as Lytle's, and the Frio was very much above the average.

Q. How many acres were there?

A. About 40,000.

Q. The whole interest that you bought—what, in your judgment, was it worth at the time?

A. I thought it was worth—the cattle were less than they had been—probably fewer than I thought there was. The land was worth about $100,000.

181 Q. What was done after that, if anything, to vest the interest in that ranch in you beside the delivery of this paper?

A. It was turned into our cattle interest—to the San Antonio Ranch Co.—and has always been held from the time of the delivery of that paper to the present time as part of the San Antonio ranch for which I received stock.

Q. Do you remember how much, if any, stock in the San Antonio Ranch Co. you received for your interest in this ranch?

A. I am not certain about that, but the books will show it if necessary.

Q. Will you annex to your deposition a copy of your certificate of stock or transcript from the books showing how much was issued to you?

A. Yes; but it will not show the facts.

Q. What other facts are there connected with the stock of that Co. which you received for your interest in this ranch?

A. The whole stock of the Co.—it was called the San Antonio Ranch Co. We owned the stock at exactly the amount of money we put in. I had put in $60,000. I had that much stock. We have since sold the Co., and before selling it we issued stock. We owned one-third exactly each. There was no necessity for issuing the stock before we sold. When we were going to sell out then the whole stock was issued and divided exactly one-third to each.

Q. State, then, what your interest in that Co. was before the stock was actually issued.

A. It was one-third of $60,000 in the first instance; $180,000 in the cattle.

Q. Who were the three persons, as you have stated, interested in the San Antonio ranch?

A. John T. Lytle, Thos. McDaniel, and myself.

Q. What fractional interest did you have in that Co.?

A. One-third each.

Q. From whom did you buy these bonds of the town of Lansing which are mentioned in the complaint and as to which you have testified?

182 A. From John J. Stewart.

Q. What did you pay John J. Stewart for these bonds?

A. I paid him $50,000.

Q. What was the agreement between you and him in reference to the purchase of the bonds?

A. There was no agreement.

Q. What was the transaction?

A. I agreed to buy the bonds at $50,000. I understood that they were for sale, and had been notified that I could purchase them.

Q. How did you pay for them?

A. By a check on a bank.

Q. On what bank?

A. Louisiana National bank.

Q. Have you that check?

A. I have not. I suppose the bank has it. I suppose it could be obtained. They never surrendered it to me.

Q. If you can obtain that check will you annex it to your deposition?

A. I think I can.

Q. State whether or not at the time you made the payment to Stewart, as you have testified, the bonds were delivered to you.

A. They were.

Q. Where did that take place?

A. In Mr. Stewart's office.

Q. Where?

A. In New Orleans.

Q. Have you stated all that you remember of the conversation between you and Stewart in reference to the purchase of those bonds?

A. It made very little impression upon me at the time. I do not

remember anything more than I have stated. I told him that I had come to purchase those bonds.

Q. State whether or not at the time you bought those bonds you had any information from any source that there was any defense to the bonds or that they were invalid bonds.

183 A. I had not the slightest idea that they were invalid. I believed that they were like some San Antonio bonds that were held void in the State courts; but when sued for in the Federal courts they were declared legal and valid.

Cross-examined:

Q. How long have you been in Texas?
A. I went to Texas in 1851.
Q. Where did you live previous to going to Texas?
A. I lived in Indiana.
Q. Had you always lived in Indiana before going to Texas?
A. Yes.
Q. Where in Texas did you reside?
A. In Lavaca.
Q. What business were you in there?
A. I was a clerk.
Q. Went there as a clerk?
A. My father had a store there, and I was a clerk there.
Q. Where did you next go?
A. In 1852 I went to Seguine.
Q. What business were you in there?
A. I was a clerk, merchant, and I dealt in money a little at that time.
Q. How long were you there?
A. Until 1857.
Q. Where did you go then?
A. I went to Jackson county, Texana.
Q. What business were you in there?
A. Merchant and clerk.
Q. In the mercantile business?
A. Commercial, and surveyor of the district.
Q. How long did you live there?
A. Until about 1861.
Q. Where did you then go?
A. I went to Mexico.
Q. Into business there?
A. No, sir.

184 Q. How long were you there?
A. Until about 1862.

Q. Where did you go then?
A. To New Orleans; after it was taken by the Federal troops.
Q. Did you go into business there?
A. No, sir.
Q. How long were you there?
A. About ten days.

Q. Where did you go then?
A. To New York.
Q. Into business?
A. No, sir.
Q. How long were you there?
A. I suppose two or three weeks.
Q. Where did you go then?
A. To Indiana.
Q. Into business?
A. Yes, sir.
Q. What was it?
A. As a lawyer.
Q. How long were you there?
A. I suppose about eight months.
Q. Were you admitted to the bar?
A. Did not need any admission. It was not required there.
Q. At what place did you practice?
A. Bloomville, Warwick county.
Q. Alone?
A. I had a partner.
Q. How long were you there?
A. When I heard of Banks' expedition going to New Orleans I went to Washington.
Q. When was that?
A. About 1863.
Q. Did you go into business there?
A. I got a clerkship there from Mr. Chase in the Treasury Department—in the Register's office.
Q. How long were you there?
A. About six weeks.
185 Q. Then where did you go?
A. To New Orleans.
Q. Into business?
A. No, sir; I was appointed assistant special agent of the treasury department at New Orleans for Texas by Mr. Chase.
Q. Then where did you go?
A. I went to Texas as soon as I could.
Q. About when was that?
A. About 1865.
Q. Where did you go then?
A. To New Orleans.
Q. Into business?
A. I went there to borrow money, and after a desperate struggle borrowed $300. Then I found employment as kind of a courier for the First National Bank of New Orleans to come to New York on business for that bank, for which they paid expenses and gave me $500.
Q. How long were you in that business?
A. About two weeks; for one trip.
Q. What next?
A. I went into the cotton business with Louis Fatman and Joseph

Fatman, in New York; into partnership with them to purchase cotton for them, and I put in $4,000 in liabilities.

Q. How long did you continue in that business?

A. About 6 weeks.

Q. What next?

A. I sold out that business and came to New York.

Q. Did you go into business?

A. No; I bought some U. S. bonds.

Q. Did you go into any regular business?

A. No, sir.

Q. How long were you in New York?

A. About two or three weeks.

Q. Then where did you go?

A. To San Antonio.

Q. And have remained there ever since?

A. I went there and organized a bank in 1866. I got the bank organized the 2d or 4th of July, 1866, and have been there ever since.

186 Q. Have you any other business there?

A. I principally own the water works there. I own a great deal of real estate. I owned gas works. I bought pretty much all over that country and sold out. I bought property from the settlers and from the Government and sold it.

Q. You have really been speculating in real estate?

A. Very little in real estate. I bought a great deal of land certificates for 20 cents an acre, and when they offered a dollar for it I sold it.

Q. Did you buy from the State?

A. I bought certificates from the holders. I located a good deal of land.

Q. How many acres do you own?

A. I have sold most of my lands. I own in San Antonio some 20,000 or 30,000 acres.

Q. What other business have you carried on?

A. I have been president of the water works Co.

Q. What other business?

A. I have been of late years—well, it is mostly financial.

Q. Have you dealt any in municipal bonds?

A. I bought $140,000 State of Texas bonds that I paid 75 cents for, that are now selling at $1.40. I bought $200,000 or $300,000 of the San Antonio bonds. I bought at a discount, and I have never sold one except at a premium yet. I bought also Bexar county bonds.

Q. Have you ever bought any municipal bonds from other States until you bought these?

A. Never.

Q. Were you acquainted down in Tompkins county before you purchased these bonds?

A. No, sir.

Q. Who was this Mr. Stewart who lived in New Orleans?

A. I do not know.

Q. What became of him?
A. I know him well, now.
Q. Did you know him before you dealt with him?
A. No, sir.
187 Q. What is his business?
A. I do not know.
Q. You speak of being interested in this ranch business or in the cattle previous to this real-estate transfer to you, previous to your selling these bonds. When did you first go into that?
A. I am not positive.
Q. How many years?
A. I suppose 5 or 6, or more.
Q. This business in which you had $180,000, $60,000 each; that had reference to what? Was it the cattle only?
A. The cattle only.
Q. No real estate?
A. They had no real estate.
Q. You had capital invested in cattle to the amount of $180,000 with three individuals. Did you herd them anywhere?
A. Lytle and McDaniel owned a ranch embracing about 375,000 acres, partly leased, in addition to the 40,000 acres of the Frio, and on which they ran sheep. The cattle that were on the land belonged to another party. The other party was a man named Cox. They wished to purchase the cattle that he might get the benefit of the grass, and they purchased that, but were unable to pay for it in cash, and he moved a lot of cattle from this Frio ranch and then told me that if I would furnish the money to make the payment I could have free range. Then I had the right in the cattle only.
Q. In this business you paid in $60,000 and they paid in that each?
A. I only paid in $40,000 at the time; finally increased to $60,000.
Q. How long had this business been running in that way before the sale of these bonds?
A. I am not sure about that; about a year or two. We declared some dividends on our stock.
Q. Was that a company before the Frio was bought in—was that a stock company, a corporation, or a partnership?
188 A. It was held under the name of Lytle & Co.—a partnership.
Q. Did you have any written agreement?
A. No.
Q. When the bonds were sold was there a corporation formed after that?
A. I think so; there was a corporation formed—the San Antonio Ranch Co.
Q. How long after you transferred these bonds to Lytle?
A. I am not sure whether it was before or after. I do not know.
Q. Were the 40,000 acres transferred by anybody before or after these bonds were sold?
A. To the San Antonio Ranch Co.
Q. Directly by Lytle and McDaniel to the ranch Co.?

A. Yes, sir.

Q. When that corporation was formed they transferred the land to the Co.?

A. Afterwards they did.

Q. Do you know anything about the consideration that went to the ranch Co.?

A. No; I do not.

Q. Do you know anything about what this 40,000 acres cost them?

A. I do not. I know very well that I lent them $60,000 to buy it.

Q. You had no interest in the land till after the corporation was formed?

A. I am not sure of that.

Q. You had no paper title to any of it?

A. Only the paper I spoke of.

Q. Do you say that that is a stock company?

A. Certainly it is, organized under the laws of Texas; a joint stock company having charter from the State of Texas.

Q. Have you received any stock in that?

A. I have. One-third was issued to me.

Q. In what shape?

A. In certificates of stock.

189 Q. You hold that?

A. I do. I have it in my possession.

Q. In New York?

A. I have sold it. I can show you the originals and you can take copies.

Q. How much is that stock?

A. I have the original $60,000, and I think I have 174 shares in $500 shares that was issued on that.

Q. You have the $60,000 for your interest in the cattle?

A. Yes.

Q. In addition you have——

A. I think I have 174 shares of $500 each; 120 in the first place, representing the $60,000 cost. This makes 294 shares in all which I own. Those shares were never cut off the books.

Q. What did you pay for that?

A. The land—the Frio land? We wished to issue all the stock, and we put in the betterments of our ranch—the land and everything—and capitalized it.

Q. You three received $60,000 worth of stock for each to represent the $180,000 you had in the cattle; then you called the Frio ranch a certain other sum?

A. We never put any sum upon it.

Q. You never estimated that?

A. No.

Q. That was put in without making a separate estimate of that land?

A. No. We put the Frio land in that Lytle and McDaniel had owned. I paid no attention to it. It was no kind of consideration to us—what we valued it at—for it all went into the company.

Q. What else went in for the stock aside from the land?
A. At any time?
Q. At the time of the organization of the company for which stock was given out.
A. Nothing except cattle and this land.
Q. Was there cattle?
A. Yes.
190 Q. How many?
A. I suppose 22,000 head when we issued the last certificates of stock.
Q. That went at the time to the company?
A. I do not know.
Q. How much went in when the company was formed, when you got your stock and this land was conveyed to the company?
A. We valued it all at $500,000, the land and all the cattle we had.
Q. And that is all that went in?
A. Yes, sir.
Q. How much was the cattle worth at that time?
A. I suppose $300,000.
Q. That estimate was not made at the time?
A. It was not, but that is what it was worth—all that was put in.
Q. You did not call the land anything?
A. If we estimated it we would have put it at $5 an acre.
Q. Your capital was $500,000 and your cattle about $300,000, and the land made up the balance?
A. Yes, sir.
Q. By land you mean this 40,000 acres of the Frio ranch?
A. Yes, sir.
Q. You spoke of land ranging from $1.50 up to $5 per acre.
A. I am speaking of ordinary grazing land; some was much higher than that.
Q. Do you remember of being examined by Mr. Hurlburt, do you not, down at San Antonio, some time in February, 1885?
A. I remember about one examination.
Q. You were examined before somebody down there and signed a deposition?
A. I think I did.
Q. Had you brought any action in the circuit court before that examination?
A. Yes, sir.
191 Q. And you were examined as a witness in those matters and those two actions were consolidated?
A. They were.
Q. Do you remember commencing some actions on the coupons?
A. Yes, sir.
Q. You commenced more than one action?
A. I do not know. I left that to my attorneys.
Q. You swore to the complaints?
A. I do not remember. I think so.

Complaint was shown witness and he testified that he had sworn to it.

Q. Do you remember that two actions were brought?
A. I am not positive, but I think there were.
Q. You knew Mr. James Stillman?
A. Yes, sir.
Q. Where did he reside at the time?
A. In New York.
Q. What was his business?
A. I think he was a member of the firm of Woodward & Stillman, a cotton commission house.
Q. Is he in New York now?
A. Yes, sir.
Q. Do you remember how many coupons you sued upon?
A. No, sir.

The complaints in the two actions were produced and show that two suits were brought, the first upon 900 coupons, being the coupons from July 1, 1876, to Jan. 1, 1882, both inclusive, and the other on 300 coupons, being the coupons from July 1, 1882, to Jan. 1, 1884, both inclusive.

Q. When did you buy those bonds of this Mr. Stewart?
A. I do not remember.
Q. Can you tell the year?
A. No; I cannot.
192 Q. When were those bonds delivered to you?
A. The day I purchased them.
Q. At New Orleans?
A. Yes, sir.
Q. Altogether—the bonds and coupons?
A. I suppose so.
Q. Do you know whether the bonds and coupons were there?
A. I do not; I positively do not know. My impression is that the coupons were there, but I never opened the package.
Q. Were the $75,000 bonds delivered at the same time?
A. Yes, sir.
Q. Did you examine them?
A. I did not.
Q. Did you open the package at that time?
A. Not at that time.
Q. At any time?
A. I do not know. I took them to San Antonio. I do not remember opening the package.
Q. You did not open the package at all, as you remember?
A. I do not remember.
Q. Where did you get the coupons?
A. I do not remember that. The coupons, I suppose, were attached. My recollection about that is—I cannot get that in mind.
Q. Were they attached to the bonds?
A. I suppose so, but I think there was a package attached to them. That is my best recollection.

Q. Those coupons were originally attached to those bonds and became due semi-annually?

A. I suppose so.

Q. Can you remember the first time you saw those coupons?

A. No; I cannot.

Q. No memory at all?

A. No memory about the coupons, definitely.

Q. Have you any memory about them?

193 A. I remember cutting off a lot myself once. After I got the bonds I know there was a lot of coupons on them.

Q. Were they past due?

A. Yes, sir.

Q. And did you receive any coupons that were not paid?

A. I do not know. There were some past-due coupons, as well as I can remember. I cut off a lot some time afterwards.

Counsel for the defendant reads to the witness the portions of his deposition taken in the suit of George W. Brackenridge against the town of Lansing, of which a copy is annexed hereto and marked Exhibit A, and ask:

Q. Were the questions which have just been read to you put to you upon your examination as a witness in your suit against the town of Lansing, and did you answer them as stated in the answers which have just been read to you?

—. ——.

Q. Where are those bonds?

A. I cannot tell.

Q. When did you last see them?

A. The last I ever saw of those bonds was about the time I saw Lytle cut off the coupons.

Q. Can you tell when the last time was that you saw those bonds? Where were they?

A. At the time I sold them—at the time I delivered them—within a month of the time I delivered them. They were on the directors' table in a room in my bank; I cannot give the date.

Q. Who had them?

A. Lytle, I think. That is the time he cut off the coupons.

Q. Was that the last time you saw them?

A. It was.

Q. Which set of coupons did he then cut off; those that became due in July, 1884, or January, 1885?

A. I am not sure; the coupons next maturing after the sale.

194 Q. Who was there at that time?

A. I am not certain that any one was there. Ferdinand Hauff, the assistant cashier, he delivered the bonds. He was assistant cashier and had charge of securities.

Q. Did he bring them upstairs?

A. I do not know. I think he was there.

Q. What did he do with them after they were clipped off?

A. I do not know what he did with them after they were clipped off.

Q. When were those bonds actually delivered by you—manually delivered—to Mr. Lytle?

A. I cannot give you the date. I think about three months before the maturity of those July coupons.

Q. Were they ever delivered—manually taken and delivered—to Mr. Lytle?

A. The delivery was made——

Q. Will you swear positively that those bonds were taken and delivered to Mr. Lytle?

A. Delivered as a sale of the bonds.

Q. In what manner?

A. I transferred them, by direction, in the presence of Lytle; told the assistant cashier to hold them in future as Lytle's; that they were his; that I had no further control of them, and they must be held ever afterwards for Lytle. That was what I considered delivery; and after that he obeyed the orders and instructions as to those bonds of Lytle and no one else.

Q. Is that all the delivery that was made?

A. I think that was. I cannot say that. I cannot remember that I ever took them in my hand myself and handed them to him.

Q. Did anybody else by your direction?

A. Yes; Ferdinand Herff delivered them.

Q. When?

A. I cannot remember that I saw him deliver them by actual manual delivery.

Q. Then you do not say positively that they were ever
195 taken and delivered in any way except what you have just stated. That is what you call delivery, is it?

A. I think it is highly probable. I do not remember of any other.

Q. Have those bonds remained in your bank ever since that time?

A. I do not know.

Q. Have you not had those bonds in your possession since that time?

A. Never.

Q. Here in New York or elsewhere?

A. Never.

Q. At the time when this writing you spoke of as being made—that was some time after your first talk?

A. Two or three weeks.

Q. Where did this first conversation take place?

A. I think it was in my own room at my residence.

Q. This writing was made afterwards. Who made it?

A. Mr. Lytle.

Q. He drew it and signed it?

A. Yes, sir; and delivered it to me.

Q. Were the bonds present then?

A. I do not know, but I think they were. My recollection is just as positive that they were present as that Mr. Lytle drew the paper.

Q. You have no doubt that he wrote it?

A. No, sir; and I have no doubt about the bonds. The bonds might have been there; I think they were.

Q. Do you remember that that writing was drawn and executed?

A. It was drawn and executed.

Q. Do you remember whether those bonds were there or not?

A. My memory is that they were there.

Q. Who had them?

A. I think he had them.

Q. Are you positive?

A. My recollection is that he took the bonds in his hand and gave them to Ferdinand Herff and told him to put them in the safe. I had the paper and have had it ever since.

196 Q. Did he ask you any questions in regard to the validity of the bonds when he bought them—whether they were good, bad, or indifferent?

A. He did not.

Q. Was there anything said about their being good or bad?

A. Yes; I assured him that they were good.

Q. Did he examine the bonds?

A. I do not remember.

Q. Do you remember whether there were any seals on those bonds or not?

A. I do not.

Q. Were there any seals put on by you or by your authority?

A. No.

Q. Did you notice whether they were ever signed by anybody?

A. I do not remember.

By Mr. WHEELER:

Q. At the time you made Lytle the offer, as to which you have testified, for his interest in the Frio ranch, what did you understand that ranch to have cost Lytle and McDaniel?

Objected to.

Q. State how much money, if any, you had advanced to him for the purchase of the ranch.

A. I discounted some notes, amounting to $66,000, I think.

Q. There have been read to you numerous questions and answers from your testimony taken in your suit against the town of Lansing. Are the statements which are made in your answers to those questions correct?

A. They are correct as far as I can remember.

Q. What has Mr. Stewart's business been since you bought those bonds of him?

Objected to as immaterial.

197 A. I do not know. I only meet him socially at the club in New Orleans. He stands well in New Orleans.

G. W. BRACKENRIDGE.

Deposition taken, reduced to writing, and by the witness subscribed and sworn to, the same having previously been read over by him, this 19th day of May, 1887, before me—

CHAS. F. HALSTED,
Notary Public, Kings Co.

[SEAL.]

Cert. in N. Y. Co.

EXHIBIT "A."

Q. When did you get the coupons and bonds?

A. I bought them in 1881; I think it was about the time; I am not sure. There were $75,000 of bonds, and I think there were some coupons due at the time; I do not remember their value.

Q. Had any of the coupons for interest been defaulted four or five years when you purchased?

A. I did not know if they had.

Q. Did you know at the time that you purchased that any of these coupons had passed due?

A. I don't think I did.

Q. Do you mean to say that if any of them were passed due that you purchased them without knowing that fact?

A. If there were any past due at that time I purchased them without knowing it.

Q. Whom did you purchase of?

A. I purchased, I think, of J. J. Stewart, at New Orleans.

Q. Where were you when you purchased from him?

A. At New Orleans.

Q. Who was present?

A. I don't remember who was present. I don't know whether any one was present.

198 Q. What led to the purchase of these bonds and to your knowledge of his having them?

A. Mr. Stillman or some friend of his recommended the bonds to me, and from the character of the recommendations, the parties who recommended them, and the price at which they were offered I thought they were a good purchase.

Q. Did you think that Mr. Stillman had some connection with the bonds or some interest in them?

A. I don't know whether in recommending the bonds he was trying to serve himself or to serve me. I don't know whether they belonged to him or to some one else. I think that my talks with him at the time I purchased were only by letter. I have not those letters. They may be saved or may be destroyed, I don't know.

Q. What did Mr. Stillman say in any of those letters in regard to those bonds and coupons?

A. I have not the slightest recollection other than that it was the offer of certain bonds in a business way.

Q. Did you purchase of him?

A. I purchased of Stewart.

Q. What conversation did you have with Stewart?

A. It made no impression on me. I cannot give the substance of

it further than that I understood that he had so many bonds and I desired to purchase them.

Q. What did you give for them?

A. I gave fifty thousand dollars for seventy-five thousand dollars' worth of bonds.

Q. What did you give for the coupons?

A. The coupons went with the bonds. I paid for the whole thing, and that covered the coupons due and to become due. I thought that I was buying a bond that was perfectly good in the Federal courts, but that was in the position of the local bonds of Missouri, and I imagined that I would make something by living outside of the State from which they were issued, and that in the local State courts the recovery was doubtful, but that they were just and legal bonds.

199 Q. The Missouri bonds issued in aid of railroads have been held to be void and recovery denied in their State courts, as you understand, at the time of this purchase. Is not that so?

A. I understood that bonds had been issued by counties and towns in the State of Missouri and other States, including Texas, having obtained railroads or parted with their bonds in efforts to obtain railroads, and that the counties and towns were seeking to repudiate them, and that local jurors and courts had rendered it difficult or impossible to obtain justice, and that judgments had been obtained in the Federal courts. In other words, that the Federal courts had decided the other way.

Q. Then, in short, you understand that the local State courts pronounced the bonds void and that the Federal courts pronounced the bonds, the same bonds, good?

A. Yes.

Q. You thought that you could succeed in these cases by bringing your action in the Federal courts?

A. I had no doubt about that; I had no doubt about the justice and honesty of the bonds, and that I could recover in the Federal courts.

Q. You would not have bought these bonds had you been a resident of the State of New York and had to sue for them in the local courts of the State, would you?

A. I don't know whether I would or not.

Q. How came you to buy these bonds at such an enormous discount?

A. I would not have bought them if they had not been at a discount.

Q. Did not that fact excite your curiosity and suspicion?

A. It did not, for I bought the bonds of the State of Texas at the same discount.

Q. You knew at the time that good and unquestionable securities, seven per cent. securities, in the money market of New York were at a premium, did you not?

200 A. Perfectly unquestionable securities were at that time at a discount and perfectly unquestionable securities were at a

premium also, the former being limited issues and only locally known.

Q. How was the price of fifty thousand dollars fixed upon?

A. I was told that they could be bought for fifty thousand dollars. Mr. Stillman told me so by letter.

Q. Did any one else talk to you about these bonds?

A. No one else.

Q. How did you pay Mr. Stewart?

A. I gave him, I think, a check on the Louisiana National bank for the amount. I never gave a check in my life that was not paid. It has been paid.

Q. What interest or control did Mr. Stillman have in these bonds after you purchased them?

A. He had none except that he advised me about it and I relied very much on what he said.

Q. Mr. Stillman was worth his millions at that time, as you understood it, did you not?

A. I supposed he was worth three or four hundred thousand dollars.

Q. What have you done with these bonds?

A. I sold them. I don't know what time it was. It was about a year ago—some time ago. I think it was after the bringing of this suit. I sold them to John T. Lytle, a stockman here. I sold or traded them for a third interest in what is known as "the Frio ranch." The ranch embraces the cattle and stock, and I think it was worth two hundred thousand dollars.

Q. What was said between you and Lytle on his purchasing the bonds?

A. I do not remember that anything was said in particular. I told him that I thought they were good bonds. I did not tell him that the interest had been defaulted for years. I did not tell him that I had brought my actions at that time. I think that I had brought them.

Q. Did you tell him that you had all the coupons on those bonds which matured on July 1st, 1876, and subsequent to that time?

A. I did not tell anything about coupons, good, bad, or indifferent.

201 Q. Why, you purchased the coupons which had fallen due on July 1st, 1876, and semi-annually thereafter down to the time of your purchase of the bonds, did you not?

A. I did not examine to see what I purchased. I bought the bonds and with them all the coupons which were not paid, I supposed.

Q. Do I understand you as testifying that you did not examine at the time of your purchase so as to know anything about the amount of the coupons which were due at that time?

A. I have no recollection whether I did or not. I cannot positively say.

Q. If none of the semi-annual interest-bearing coupons on those bonds had been paid since January 1st, 1876, and those becoming due subsequent to that time down to the time of your purchase, a

period of about six years, had been in default, don't you suppose that you knew it at the time of your purchase?

A. I don't know whether I did or not. I bought the bonds, and I would have taken them just the same with the coupons on or off—that is, the matured coupons.

Q. Then, as I understand you, you did not regard the ten or twelve thousand dollars' worth of matured coupons at the time of your purchase as worth anything if you would have taken the bonds in this case just as soon with them on as off?

A. I bought them in a lump, as I before stated, under the advice of Stillman, and would have considered them, of course, as valuable; but I would have taken them any way.

Q. Can you state whether you would have taken the bonds with the matured coupons off as soon as with them on at that figure?

A. I think I would. When I found there were other coupons to them I was surprised, and thought I had got that much more.

Q. Then you did ascertain that there were some due coupons at the time you purchased?

A. I can't recollect anything about it—whether I knew it at that time or not.

202 Q. When did you first ascertain what you are now able to swear positively to, that you had purchased defaulted coupons?

A. I can't say. It is a good while ago. It must have been a short time after I bought them. I do not remember, but I take it for granted that I must have looked at them at the time of purchase. My recollection is that there was a package with them which I did not inspect. That is my recollection now, but I am not positive.

Q. That package was the matured coupons, was it?

A. I don't know. I now think that they were there and were delivered to me at that time, but I am not at all certain of it. They may have come into my possession afterwards.

Q. Did you cut from the bonds any coupons which matured prior to your purchase?

A. I don't recollect.

Q. But you do recollect that there were two packages—one small one and one large one—which were delivered to you?

A. I do not so recollect, but I think that in the package delivered to me there was an envelope, but whether it was at the time they were delivered to me I don't remember, or whether I put it in afterwards. I may have added the envelope to the package afterwards.

Q. Then, as I understand, there were two envelopes?

A. There was one large package which was the bonds, and the envelope which I associated with the package may have been placed with it by myself long afterwards—that is, after the delivery of the bonds.

Q. Where were these bonds made payable?

A. I don't know where the bonds were payable. The coupons were payable at the Fourth National bank, New York city. That is my recollection.

Q. What is the date of their issue—the bonds?

A. I don't recollect. I have no definite recollection. This can all be settled by referring to the bonds.

Q. Have you any indefinite recollection as to their date?

203 A. I suppose they were dated about '75 or '76—somewhere along there.

Q. Is that merely a guess, or is it an indistinct recollection?

A. A little of both.

Q. When did these bonds become due? State your best recollection, if you have any.

A. I have no recollection. Whether it was a twenty or thirty year bond I don't know, or whether it was an option bond I don't know. I am not sure that it was either one or the other.

Q. Did you receive any note or memoranda of the purchase of these bonds or bill of sale in any form?

A. I have no recollection of any in any form.

Q. Did you ever make any memoranda of what you got on that occasion?

A. I did not. I have no recollection of making any.

Q. On receiving those bonds what did you do with them?

A. I think I left them on the Louisiana National bank; that is my recollection. I am not sure of it.

Q. Did you know Stewart before your purchase?

A. I did not.

Q. Who gave you a letter of introduction to him?

A. I don't think I had any.

Q. Do you say that you did not?

A. I have no recollection.

Q. Did you go to New Orleans especially to hunt Mr. Stewart on this business?

A. I can't remember.

Q. Did you go to Stewart or did he come to you in regard to this matter?

A. I went to Stewart. That was my recollection.

Q. Had you written him before you saw him personally?

A. I think not. If I did, it has slipped my memory.

Q. Now, state what you said to Mr. Stewart first on that occasion.

A. I have no recollection.

Q. Do you recollect saying one word to him so as to be able to say what it was?

204 A. I do not; not one word.

Q. Is your memory good or bad?

A. My memory of ideas is good; as to language is bad. As to the substance it is good, but as to the language used it is poor.

Q. Please state the substance of what took place between you and Stewart.

A. I went to Mr. Stewart to purchase those bonds. I stated my business, the price I understood they were offered at, and asked him for them. My recollection of the substance of our interview is that I told him that I understood he had $75,000 of Lansing bonds which I could get at $50,000, and I got them; that is about all of it. I have no recollection of anything being said about coupons.

I will not say that there was nothing said about coupons. I can't give the substance of what Stewart said. It made no impression on me at all.

Q. Did you make any inquiry of Stewart at all in relation to those bonds?

A. I have no recollection of making any.

Q. Were the packages at that time delivered to you?

A. I think they were delivered to me right there. Whether he went out for them or not I do not recall. It was all done in twenty minutes.

Q. On his delivering them to you did you examine them?

A. I do not recollect.

Q. He was a stranger to you, was he not?

A. He was. I knew him by reputation; that was all.

Q. You did not take bonds from him and pay that amount of money without examining them, did you? Would you have been likely to?

A. I think it highly probable I would, but I think that as likely as not I did examine them.

Q. Did you tell him that Mr. Stillman recommended him to you?

A. I don't remember it, but I think it is altogether probable that that is what I did say.

Q. Did he know Mr. Stillman, as you understood?

A. I took it for granted that he did.

205 Q. What did you do with the bonds next?

A. My recollection is that I left the bonds there at the Louisiana National bank some considerable time. It may have been nine months or longer. I think about three months. I am not sure about it.

Q. What did you do with them then?

A. I think I took them out personally and took them to New York.

Q. What did you do that for?

A. Because they were payable in New York and I wanted to get them into line of collection.

Q. What did you do with them when you first got there?

A. I do not recollect with I did with them. I think I put them in the safe at the hotel.

Q. What, then, did you do with them when you took them out of the safe at the hotel?

A. I don't remember whether I put them in the City bank or not. Some time after that I took them to Woodward & Stillman. They were brokers, bankers, and business men in New York. It is the James Stillman who recommended the bonds to me. It was a natural course of business that I took them to the man who recommended them to me, and for advice.

Q. Did you take them to him for advice?

A. I did; for his advice and consultation.

Q. What advice did you want?

A. Business advice—good advice. I did not go to dictate to him how to advise me. I bought the bonds on his advice and went to

him to know whether I bought them for his account or my own. At the time I bought them I did not know whether it was for my account or whether he wanted some interest in them.

Q. What did he say to you on that occasion?

A. At the time I went to him for advice he said the bonds were perfectly good and recommended them to me, and would not say positively whether I should keep them for my own account or not.

Q. What did you ask him as to your purchasing them on his account?

206 A. I expressed perfect willingness to take the bonds or to hold them for his account, but I wanted it definitely understood.

Q. He would not give you a definite answer then, you say? Please answer directly.

A. I don't recollect at that time.

Q. Had you made any effort to collect these bonds up to that time?

A. None whatever.

Q. Why did you not go to the bank where the coupons were made payable and collect them?

A. I do not know; I don't remember.

Q. Was it not because that you had understood from some source or other that the town had refused to pay?

A. I suppose it was.

Q. At the time that you took these bonds to New York and left them with Woodward & Stillman, had you received any communication from Mr. Stillman before you saw him there in regard to this subject?

A. Not at all, that I remember of.

Q. Did you not receive that information, that the town had refused to pay these bonds, through some of your communications with Mr. Stillman in your early negotiations?

A. No; I did not.

Q. Then can you tell any human being from whom you did receive that information?

A. Yes; I heard a rumor from Mr. Hummell after I bought the bonds, and told him that I had bought them.

Q. Did Mr. Stillman in that first conversation state to you anything about the reasons why the town had refused to pay—did you ask him?

A. He did not. I don't know the reason the town refused to pay it.

Q. What advice did Stillman give you?

A. He advised me to consult with Shearman & Sterling, attorneys.

Q. What for?

A. To find out what was the matter with the bonds—the legal bearing of the question.

207 Q. How did you know that there was anything the matter with the bonds up to that time?

A. The coupons had not been paid and the conversation with Mr. Hummell was all I knew about it; also the purpose of getting the ownership without the State so that they might be sued in the Federal courts.

Q. What purpose was there to get the ownership out of the State so as to sue them in the Federal court, which you have testified to?

A. I stated in my examination yesterday it was to remove the matter from the local influence in the State courts.

Q. What influence do you refer to—juries?

A. The same influences which have caused the removal of similar causes to Federal courts in other States.

Q. What are those influences, those that operate upon jurors?

A. Both jurors and also judges who depend on popular vote for their election.

Q. You brought your action in the Federal courts, where it will be tried before a jury of our State, did you not?

A. I did not know whether it would be tried before a jury or not.

Q. What did Shearman & Sterling advise you as to the course to take?

A. They advised me to bring suit in the courts of the United States.

Q. Up to the time that they advised you to bring suit had you presented the coupons for collection?

A. No; I had not; not myself, personally. As to any other presentation I do not know. I had not directed any one to collect them, that I remember.

Q. You understood that Mr. Stillman had some interest in these bonds, did you not, at the time that he recommended you to buy them?

A. I don't remember. I had no information on the subject. I did not know whether it was for his interest or mine.

208 Q. What did you believe?

A. It was impossible to tell. I was in doubt whether I was buying for him or for myself; but my impression was that some way or another he had some interest.

Q. You have not told me yet what the substance of the conversation which you had with Mr. Stillman was?

A. I tried my best to tell you in a former answer. There was talk of about ten or fifteen minutes which was uncertain, but I left dissatisfied in my own mind.

Q. Dissatisfied and uncertain as to what?

A. As to what he intended to say to me.

Q. To say to you about what?

A. About the business which we were talking about; as to the position the bonds were in and the position I was occupying in the whole matter; whether I had bought the whole or part or what; or, in other words, I knew that legally I had bought the bonds outright, but felt that perhaps he wanted some interest in them.

Q. He would not tell you, would he?

A. The conversation was on all sides of it, all to the point, without being perfectly definite; pleasant, conversational, and a disposi-

tion to put the thing off and with a disinclination to say positively as to it.

Q. I insist upon an answer—whether he told you upon that occasion how you were holding those bonds or what he wanted you to do with them.

A. He did not tell me, but he left the impression upon me that he intended that I should keep the bonds.

Q. Then what were you uncertain and dissatisfied about? Please explain, if you can.

A. I did not feel perfectly sure where I stood, and I wanted to know where I stood down to a point.

Q. Did you ask him what interest he had in it?

A. I do not remember that I did.

Q. Did you ask him what interest he had in it in any manner?

A. I do not remember what I did.

Q. Did you ask Mr. Stillman why he wanted you to purchase these bonds?

A. I do not remember that I did. I thought I knew.

209 Q. Did you ask Mr. Stillman what he wanted you to do with them?

A. I think that possibly that question was asked. It would have been very pertinent, but I am not sure about it.

Q. What was said in reply in substance or effect?

A. I do not remember.

Q. Did he state to you on that occasion why he wanted you to purchase these bonds and coupons?

A. I do not think he did.

Q. Are you able to give us anything of any intelligent conversation you had there?

A. I don't remember.

Q. The next time you saw Mr. Stillman was how long afterwards?

A. Within a year.

Q. Where was that?

A. I cannot locate it. It was in New York city.

Q. Did you go there to see him in regard to the bonds?

A. Yes; that was our motive—probably the only one.

Q. What did you go to him there for?

A. I wanted a definite understanding as to these bonds.

Q. Understanding as to what about them?

A. As to whether he wanted any interest in them and take the bonds off my hands and hold them or whether they were my property and I was to keep them. He wanted me to keep them—to take them.

Q. Why did he?

A. I did not ask his motives.

Q. Did you say anything to him on that occasion about the apparent litigation you would have to have, and that you bought them on his recommendation and you would like to have him take them off your hands?

A. I did not. I intimated that I had had more annoyance about the matter than I expected, and that was about all.

Q. Did you state that to him in substance or effect?

A. I think it was about that.

210 Q. Did he refuse to do it—to take them off your hands directly or indirectly?

A. I suppose in a quiet way he refused, or rather asked me to keep them.

Q. He recommended to you these bonds as perfectly good before you purchased them, did he not?

A. He advised me to buy them.

(Question repeated.)

A. I certainly took his letter as such recommendation; whether he did in terms I do not know.

Q. Did he state to you in any of your conversations that as he had recommended these bonds he would stand between you and all harm, or that in substance and effect?

A. He never has, directly or indirectly.

Q. Did you guarantee the bonds in any form or manner when you sold them?

A. I did not.

Q. Where are the coupons now?

A. They are in the hands of Shearman & Sterling, I suppose; so I left them with them or I sent them by registered mail; I do not remember exactly.

Q. Where are the bonds now?

A. I delivered them myself to Mr. Lytle.

Q. Have you paid your attorneys anything for this action so far?

A. No; and they haven't presented any bills to me.

Q. Did you have any talks with Mr. Stillman as to the necessity of bringing an action in the United States court?

A. I don't remember that I ever did. I think it very likely that I did.

(Paper shown witness purporting to be a complaint in a second action brought by him, as marked on the outside, against the town of Lansing.)

Q. Do you remember to swearing to the complaint, of which that is a copy?

A. I suppose I swore to it.

Q. Now look and see the date of the maturity of the coupons first sued on.

A. I find from this paper that it calls for all the coupons from 1st July, 1876, to 1st July, 1882.

211 Q. Is that your recollection of it?

A. That is my recollection.

Q. Then it seems that you have purchased coupons which have been defaulted nearly five years, does it not?

A. From this paper it seems so.

Q. Have you any memoranda in your possession of the numbers

and amount of coupons and bonds that you now own or ever owned of the town of Lansing?

A. I have none. I do not think I ever did. I do not think I have any memoranda of any bonds I ever owned.

Q. Have you had any memoranda whatever of these bonds?

A. I don't remember that I have.

Q. Have you ever shipped those bonds or remitted them to any one?

A. I am not sure; they have passed once or twice between here and New York and once I carried them on my person.

Q. In a business point of view and as men are accustomed to do business, where you purchase bonds on a recommendation, as in this case, relying upon it, between such business men, is it usual and customary in case of your failure to collect for them to take them off your hands?

A. I do not know of any rule. I never heard of any custom.

Q. Did you rely upon any such arrangement in this case?

A. I did not after the thing was definitely settled with Mr. Stillman.

Q. But did you before you definitely settled it with Mr. Stillman, owing to your relations and what he may have stated in his letters to you?

A. I tendered the whole thing to him, and having tendered it I was bound to let him have it at any time. I felt that he was morally bound to take them, if there was anything wrong in it, if I was swindled in it; but having consulted attorneys and taken the bonds, I feel that he is under obligations to take the bonds.

212 Q. Can you state one word of conversation that has ever occurred between you and Mr. Stillman or Mr. Stewart in regard to these bonds and coupons except, as you have repeatedly said, that Mr. Stillman said that they were perfectly good?

A. I cannot.

Q. Why is it that you remember that being said so distinctly and are unable to remember anything else? Can you explain?

A. Yes; I can very easily; that they were good was the moving cause upon which I acted.

Q. And still you are unable to state a word of conversation that took place between you and Stillman on your going to New York several times to consult him as to those bonds?

A. I never have gone to New York simply to consult Stillman about these bonds, but when in New York on other business much more important I have gone down and called at the Post building to consult him. I am not able to remember the language that passed between us.

Q. Now, when you purchased these bonds and before you paid the money, did you understand and believe that you would have to bring an action in the U. S. court in order to recover, as you believed, in the State courts of New York?

A. I can't remember, but if I did not have the idea then I got it quickly afterwards.

Q. Is it your belief that you had such an idea then, owing to the general history of such bonds?

A. The fact that the local bonds were repudiated almost everywhere accounted to me for the price that I paid.

Q. You have dealt in Texas bonds that have been repudiated, have you not?

A. I have not, except the old Texas scale debt.

Q. Did you ever own any town and railroad bonds before?

A. I don't remember that I did.

213 Q. And the extreme low price of these bonds, including the twelve thousand worth of past-due coupons that you received, and believing that you could recover them in the United States court, were among the inducements that led to the purchase, were they not?

A. Yes.

Q. Were these bonds sealed?

A. I don't remember.

At this point the defendant's counsel closed his examination. The plaintiff then explained his testimony in giving his answer to the 132d question, and said: In giving the answer, "That is my recollection," I intended to say, "I have no definite recollection."

Defendant's counsel on redirect examination:

Q. Have you any definite recollection as to there being any past-due coupons accompanying these bonds at the time that you purchased or that you had any knowledge or information as to any such at that time?

A. I have no definite recollection and think that I have answered this question substantially before.

GEO. W. BRACKENRIDGE.

214 Since the taking of the above deposition Mr. Brackenridge has, in accordance with his statement contained on page 9 of the within deposition, produced the check for $50,000, which check I have hereunto annexed and marked "Exhibit B."

CHAS. F. HALSTED,
Notary Public, Kings Co.

[SEAL.]

Cert. in N. Y. Co.

Since the taking of the above deposition Mr. Brackenridge has produced copies of his certificates of stock in the San Antonio Ranch Co., mentioned on page 7 of the within deposition. I have hereunto annexed copies of these certificates and marked them "Exhibits C & D."

CHAS. F. HALSTED,
Notary Public, Kings Co.

[SEAL.]

Cert. in N. Y. Co.

Since the taking of the above deposition Mr. Brackenridge has produced the statement or receipt mentioned on page 4 of this

deposition. I have hereunto annexed said receipt and marked it "Exhibit E."

CHAS. F. HALSTED,
Notary Public, Kings Co.

[SEAL.]

Cert. in N. Y. Co.

EXHIBIT B. N. Y., Oct. 22, 1888. C. F. H.

Lansing City bonds.

No. —. NEW ORLEANS, *Feb'y* 27, 1882.

The Louisiana National Bank of New Orleans pay to the order of James J. Stewart, Esq., fifty thousand dollars and charge the San Antonio Nat'l bank.

$50,000. G. W. BRACKENRIDGE, *Pres't.*

Stamped on face in red ink: Louisiana Nat'l bank, New Orleans, La. Paid Feb. 28, 1882.

215 (Endorsed:) For deposit, James J. Stewart. Hibernia Nat'l bank, New Orleans. Feb. 27, 1882.

EXHIBIT "C." N. Y., Nov. 9, 1888. C. F. H.

"Incorporated under the laws of the State of Texas.

Shares, $500 each.

The San Antonio Ranch Company.

No. 1. 120 shares.

This is to certify that Geo. W. Brackenridge is the owner of one hundred and twenty shares, of five hundred dollars each, in the capital stock of the San Antonio Ranch Company, full paid and non-assessable, transferable only on the books of the company in person or by attorney on the surrender of this certificate.

In witness whereof the seal of the company and the signatures of the president and secretary are hereunto affixed.

San Antonio, Texas, July 2d, 1885.

[LEGAL SEAL.] GEO. W. BRACKENRIDGE, *President.*

JNO. T. LYTLE, *Secretary.*"

EXHIBIT "D." N. Y., Nov. 9, 1888. C. F. H.

"Incorporated under the laws of the State of Texas.

Shares, $500 each.

The San Antonio Ranch Company.

No. 7. 170 shares.

This is to certify that G. W. Brackenridge is the owner of one
216 hundred and seventy shares, of five hundred dollars each, in the capital stock of the San Antonio Ranch Company, full

paid and non-assessable, transferable only on the books of the company in person or by attorney on the surrender of this certificate.

In witness whereof the seal of the company and the signatures of the president and secretary are hereunto affixed.

San Antonio, Texas, April 26th, 1887.

[LEGAL SEAL.] GEO. W. BRACKENRIDGE, *President.*

JNO. T. LYTLE, *Secretary.*"

EXHIBIT "E." N. Y., Nov. 12, 1888. C. F. H.

SAN ANTONIO, *May* 24, '84.

Received of G. W. Brackenridge county bonds amounting to seventy-five thousand dollars, as part payment for a one-third interest in our Frio ranch & stock located on the Frio river, in Frio county, Tex.

$75,000.00 bonds.

LYTLE & McDANIELS.

A certified copy of the charter of the San Antonio Ranch Co., referred to on page 7 of the within deposition, has been produced.

I have hereunto annexed a copy of said charter and marked it Exhibit F.

CHAS. F. HALSTED,

[SEAL.] *Notary Public, Kings Co.*

Cert. in N. Y. Co.

217 EXHIBIT "F." N. Y., Nov. 12, 1888. C. F. H.

Charter.

A private corporation, formed for the purpose of owning, purchasing, breeding, raising, fattening, and selling cattle, horses, and sheep, together with such lands and other property necessary to the successful conducting of stock-raising on ranch or ranches.

1st. The San Antonio Ranch Company.

2d. For the purpose of owning, purchasing, breeding, raising, fattening, and selling cattle, horses, and sheep, together with such lands and other property necessary to the successful conducting of stock-raising on ranch or ranches.

3d. The business of the company shall be transacted in the city of San Antonio.

4th. The San Antonio Ranch Company charter shall be and continue for the term of fifty years.

5th. The directors of said company shall consist of three directors, and John T. Lytle, Thomas M. McDaniel, of Medina county, Texas, and G. W. Brackenridge, of San Antonio, Texas, shall be the directors of said company for the first year.

6th. The capital stock of said company shall be five hundred

thousand dollars, divided into one thousand shares of five hundred dollars each.

JNO. T. LYTLE.
T. M. McDANIEL.
GEO. W. BRACKENRIDGE.

THE STATE OF TEXAS, }
County of Webb. }

Before me, J. O. Nicholson, a notary public in and for the county of Webb, Texas, on this day personally appeared T. M. McDaniel, known to me to be the person whose name is subscribed to
218 the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

[L. S.] Given under my hand and seal of office this 26th January, 1885.

J. O. NICHOLSON,
Notary Public, Webb County.

STATE OF TEXAS, }
County of Bexar. }

Before me, John A. Fraser, a notary public in and for Bexar county, Texas, on this day personally appeared John T. Lytle and George W. Brackenridge, both well known to be the persons whose names are signed to the above instrument, and each acknowledged to me that he had executed the same for the purposes and considerations therein expressed.

[L. S.] Witness my hand and official seal, at office, in the city of San Antonio, this 28th day of January, A. D. 1885.

JNO. A. FRASER,
Notary Public, Bexar Co.

(Endorsements:) Charter. The San Antonio Ranch Co. Filed in the department of state January 29th, A. D. 1885. J. W. Baines, secretary of state.

DEPARTMENT OF STATE.

I, Jos. W. Baines, secretary of state of the State of Texas,
219 do hereby certify that the foregoing is a true copy of the original charter of the "San Antonio Ranch Co.," with the endorsements thereon, now on file in this department.

Witness my official signature and the seal of State affixed, at the city of Austin, this 29 day of January, A. D. 1885.

[SEAL.] J. W. BAINES,
Secretary of State.

Deposition of Abraham Luria.

STATE OF LOUISIANA,
Parish of New Orleans.

Deposition of witness produced, sworn, and examined this eighth day of November, in the year one thousand eight hundred and eighty-eight, at the office of the undersigned notary, No. 35 Carondelet street, in the city of New Orleans, at eleven o'clock a. m., under and by virtue of the annexed notice and affidavit, in a certain case entitled "The Town of Lansing against John T. Lytle," now pending in the U. S. circuit court for the northern district of New York, in which the said Town of Lansing is plaintiff and John T. Lytle is defendant, Mr. Thomas L. Bayne, of the firm of Bayne, Denegre & Bayne, attorneys-at-law, in this city, being here present and appearing on behalf of John T. Lytle, the defendant in said suit.

Mr. ABRAHAM LURIA, the vice-president of the Louisiana National Bank of New Orleans, residing at No. 666 Magazine street, in the city of New Orleans, aged forty-nine years and upwards, being duly and publicly sworn pursuant to the laws governing depositions and examined on the part of the defendant by THOMAS L. BAYNE, Esq., attorney representing the defendant herein, doth depose and say as follows:

First. To the first interrogatory he saith:

My name is Abraham Luria. I am forty-nine years of age.
220 I have resided in New Orleans since my birth. I was cashier of the Louisana National bank from 1869 until July, 1888, when I became vice-president of said bank.

Second. To the second interrogatory he saith:

I am well acquainted with George W. Brackenridge; he is now and has been for many years president of the San Antonio National bank, of San Antonio, Texas, and he was president of said bank in February, 1882. I knew him at that time and prior thereto and since. I have often seen him write, and I am acquainted with his handwriting.

Third. To third interrogatory as follows:

Look at the check now shown you, dated February 27, 1882, and marked "Exhibit B, N. Y., October 22, 1888, C. F. H.," and state in whose handwriting is the written part of the said check. He saith:

It is in the handwriting of George W. Brackenridge. All of the writing on the face of said check, including the marginal memorandum, "Lansing city bonds," upon said check, marked "Exhibit B, New York, October 22, 1888, C. F. H.," is in the handwriting of the aforesaid George W. Brackenridge.

Fourth. To fourth interrogatory as follows:

State whether the account of the said Brackenridge was good for the said check at the time it was drawn and whether the amount

was actually paid by the Louisiana National bank; and, if so, when and upon whose order. He saith:

The check was perfectly good, and the account of the San Antonio National bank, of which said Mr. Brackenridge was president, was good for the amount of said check at the time it was drawn, and said check was paid by the Louisiana National bank on the 28th February, 1882, on the order of James J. Stewart and in accordance with the stamp of the Louisiana National bank impressed upon the check at that time.

Fifth. To fifth interrogatory as follows:

Do you know James J. Stewart and are you acquainted with his handwriting? He saith:

221 Yes; I was acquainted with James J. Stewart in 1882 and for years prior thereto until his death, which, I think, was in the early part of this year, 1888, and, to the best of my knowledge and belief, the endorsement, "For deposit, Jas. J. Stewart," on the back of said check, is in his handwriting. I have often seen and known his signature years ago, and said check was paid by the bank on his order, coming through the clearing-house of New Orleans from the Hibernia National Bank of New Orleans, where it had been deposited.

A. LURIA.

STATE OF LOUISIANA, } ss:
Parish of Orleans, }

I, Omer Villere, a notary public, duly commissioned and qualified, in and for the parish of Orleans, State of Louisiana, do certify that Mr. Abraham Luria, the witness, personally appeared before me on this eighth day of November, 1888, at eleven o'clock in the forenoon, at the city of New Orleans, in the State of Louisiana, and, after being sworn to testify the truth, the whole truth, and nothing but the truth, did depose to the matters contained in the foregoing deposition and did in my presence subscribe the same; and I further certify that I have subscribed my name to each half sheet thereof in red ink; and I further certify that Thomas L. Bayne, Esq., appeared in behalf of the defendant, and that no one appeared for the plaintiff.

In faith whereof I hereunto sign my name and affix my notarial seal on this the eighth day of November, 1888.

OMER VILLERE,
Notary Public.

222 *Order.*

At a term of the circuit court of the United States in and for the northern district of New York held at Syracuse on the 27th day of November, 1888.

Present: Hon. W. J. Wallace, circuit judge.

THE TOWN OF LANSING
vs.
JOHN T. LYTLE. } 5689.

JOHN T. LYTLE
vs.
THE TOWN OF LANSING. } 5709.

On reading and filing the affidavit of James H. Wood and notice of motion, after hearing Mr. Everett P. Wheeler for the motion and Mr. Howland in opposition, it is ordered that the deposition of Abraham Luria, taken in New Orleans before Omer Villere, notary public, on the 8th day of November, 1888, be, and the same is, received in evidence on the part of said Lytle in the above-entitled causes as if taken within the time prescribed by the rules of court, on condition, however, that if the counsel for the town of Lansing so elect he shall have an opportunity to cross-examine said Luria or to take further testimony relating to the subject of said deposition, and that the final hearing of the causes in that case be postponed to give him an opportunity to take such further testimony; and Mr. Howland, of counsel for said town of Lansing, having announced in open court that he did not desire to postpone the hearing for such purpose, it was further ordered that the said deposition of said Luria be considered as in evidence and as part of the record of said Lytle in said causes.

WM. J. WALLACE.

223 *Opinion.*

United States Circuit Court, Northern District of New York.

THE TOWN OF LANSING
vs.
LYTLE.

WALLACE, *J.*:

This action is brought to compel the defendant to surrender up seventy-five $1,000 municipal bonds, with annexed interest coupons, together with certain past-due coupons for $18,375 unpaid interest for cancellation, and to restrain the defendant from bringing suits at law upon them and from transferring them. The defendant has filed a cross-bill praying for a decree against the town of Lansing for the amount of the past-due coupons, with interest from the date of their maturity.

The bonds purport to have been issued by the town of Lansing under the authority of the statute of the State of New York, passed May 18, 1869, to permit municipal corporations to aid in the construction of railroads. The county judge of Tompkins county, in which county the town is situated, assuming to act under the authority of that statute, rendered a judgment March 21, 1871, appointing commissioners to execute bonds of the town to the amount of $75,000 and invest them in the capital stock of the Cayuga Lake Railroad Company. October 14, 1871,

the commissioners executed the bonds in suit and delivered them to the railway company in exchange for capital
224 stock. The bonds are payable to bearer on the first day of January, 1902, with interest at the rate of seven per cent., payable semi-annually, upon the presentation of the coupons annexed. Before the commissioners delivered the bonds to the railway company a writ of certiorari was issued from the supreme court of the State, directed to the county judge, for a review of this judgment, and such proceedings were thereafter duly had, pursuant to such writ, that in May, 1872, the supreme court of the State reversed and in all things set aside the judgment of the county judge appointing the commissioners and authorizing the creation of the bonds. At the time the commissioners issued and delivered the bonds to the railway company they and the railway company also had full notice of the issuing of the writ of certiorari, and the commissioners took from the company a bond of indemnity to save themselves harmless from all liability in consequence of their acts. The bonds, as soon as delivered, were pledged by the company with bankers in New York as collateral security for a loan of $50,000, and in November, 1872, these bankers transferred them to Elliott, Collins & Co., bankers of Philadelphia, pursuant to an agreement between the latter and the railway company, by which they paid up the loan of the company to the New York bankers and took the bonds for security and for sale as agents of the railway company. In February, 1873, Elliott, Collins & Co. sold the bonds for the railway company for $54,337, acting under the instructions of the company, and the
225 proceeds were applied to pay the loan of the company, and the balance was placed to its credit and drawn out by it from time to time. It does not appear who purchased the bonds of Elliott, Collins & Co., but it does appear that at a later period one Stewart claimed to be the owner of them and brought a suit upon some of the coupons against the town. That suit was tried in this court in June, 1877, and a verdict was rendered for the town and a judgment entered dismissing the suit upon the merits. Subsequently the bonds were in the possession of Stewart, at the city of New Orleans, and in 1881 he transferred them to one Brackenridge, together with coupons representing $10,000 or $12,000 of unpaid interest. Brackenridge claims to have paid Stewart $50,000 for the bonds and coupons. He brought two suits upon the coupons in this court—one founded on 900 coupons which matured from July 1, 1876, to January 1, 1882, inclusively, and the other founded on 300 coupons which matured from July 1, 1882, to January 1, 1884, inclusively. There is no evidence in the record of the result of these suits brought by Brackenridge, but it may — inferred from the circumstances attending the subsequent sale of the bonds by him to Lytle that those suits were prosecuted unsuccessfully or were abandoned. Lytle, the present defendant, bought the bonds of Brackenridge at San Antonio, Texas, in the spring of 1884, and claims to have taken them in exchange for a one-third interest in a cattle ranch on the Frio river, in which he owned a half interest jointly with one McDaniels.

The controversy turns upon the question whether Lytle or any one of the previous holders of the bonds and coupons
226 acquired the title of a *bona fide* purchaser to them. It was held by the Supreme Court in the suit of Stewart against the town that as between the railroad company and the town the bonds were invalid, and that the judgment of the supreme court of the State reversing the judgment or order of the county judge authorizing the commissioners to execute the bonds was equivalent to a refusal by the county judge to make the original order (Stewart *v.* Lansing, 104 U. S., 505). It was also held in that case that the actual illegality of the bonds was established by the judgment of reversal, and it was therefore incumbent upon the person claiming title to them to show that he occupied the position of a *bona fide* holder before he could prevail against the town. Conformably with the rule applied in that case the burden of proof is therefore upon the present defendant, and it is only necessary to consider whether the evidence in his behalf meets the requirement of the rule and shows satisfactorily that he is or that Stewart or Brackenridge was a *bona fide* holder of the bonds and coupons. Elliott, Collins & Company did not sell the bonds to satisfy their claim as pledges, but sold them as agents for the railway company; consequently it is unnecessary to consider whether the defendant can rely upon their title as *bona fide* holders under the pledge. That title never passed to the purchaser, and the purchaser only succeeded to the rights of the railway company, and the railway company by paying the loan did not acquire the rights of the pledges, but merely reinvested itself with its original rights in the bonds.

227 If Stewart or Brackenridge was a *bona fide* holder of the bonds and coupons it is immaterial whether when the defendant took them he did or did not acquire them *mala fides*, because he can stand upon the title of his predecessor and such title inures to him. Commissioners *v.* Bolles, 94 U. S., 104; Montclair *v.* Ramsdell, 107 U. S., 147. The purchaser of negotiable paper with knowledge of its infirmities as between the original parties can recover its full amount, and is not limited to a recovery of what he may have paid or advanced for the paper before acquiring notice if he has purchased of one who bought it before maturity for value and without notice of any infirmity or defence. (Butterfield *v.* Town of Ontario, 32 Fed. Rep., 891.) It is not necessary for one who seeks to avail himself of the title of a prior holder of negotiable paper to show affirmatively that the previous holder took the paper without notice of the facts affecting its validity, but when illegality in the inception of the paper is shown the burden is cast upon him to prove that the previous holder parted with value when he acquired the paper. (Smith *v.* Sac County, 111 Wall., 139.)

The first inquiry is whether Stewart was a *bona fide* holder of the bonds and coupons. Upon this issue the facts of the case differ but slightly from those which were considered by the Supreme Court in the suit of Stewart against the town, and which were held to be insufficient to invest him with such a title. It is now shown that there was such a person in existence; that he had the bonds in his

possession; tha thetr ansferred them to Brackenridge, and that
228 he received a check of $50,000 for them made by Brackenridge, but there is no evidence to show from whom or how he acquired the bonds or whether he paid anything for them or parted with anything of value when he took them, and from all that appears he may have held them and been the agent to sell them for some one else. Stewart's title is of no avail to the defendant because there is a total absence of evidence that Stewart was a purchaser of the bonds for value.

The next inquiry is whether Brackenridge was a *bona fide* holder of the bonds and coupons. The record contains the history of his purchase as detailed by himself, and he is the only witness who testifies upon the subject. His credibility as a witness is overthrown by the inherent improbability of the transaction as he describes it. He was a banker at San Antonio, Texas, and he states that at the time of the purchase he was informed by one Stillman, who resided in New York, that the bonds could be bought for $50,000. He says he bought them of Mr. Stewart, who lived in New Orleans and who until that time was a stranger to him, paying him $50,000 for them. He professes to be unable to give the conversation that took place between Stewart and himself, or the substance of it, further than that he told Stewart that he understood that Stewart had $75,000 of Lansing bonds which he could get for $50,000, and Stewart assented. He states that he made no inquiry of Stewart otherwise in reference to the bonds, that he made no inquiry of Stillman or any one else in regard to their history or value, and that he acted wholly
229 upon the assumption that the purchase would be a good one because Stillman had suggested it. At the time he bought the bonds he got with them $10,000 or $12,000 in overdue coupons, and he states that this circumstance made no impression upon him, that he bought the bonds and coupons in the lump, and he conveys the impression that he did not know until subsequently anything about the coupons. He testifies that he left the bonds at the place where he bought them for several months, and when he took them away he carried them to New York city and went to see Stillman, and that he went to see Stillman because he did not know whether he had bought the bonds for himself or for Stillman, and to find out whether Stillman wanted to take the bonds off his hands or whether he was to keep them himself. It appears that immediately after this interview with Stillman Brackenridge placed the coupons in the hands of attorneys at New York city, who brought the two suits upon them which have been referred to. He testifies that he paid for the bonds by his check. A check is produced made by him as president of the San Antonio National bank on the Louisiana National Bank of New Orleans, bearing the endorsement of Stewart "for deposit;" and the vice-president of the Louisiana National bank testifies that it was paid by the Louisiana National bank. It is singular that this check is produced by the bank upon which it was drawn, and that no attempt has been made to show that it was paid by the San Antonio bank or to give by Brackenridge, or any one else, any light upon its history. Brackenridge

does not testify explicitly that he paid the check, but says "it was paid." It is so utterly improbable that a man
230 of the intelligence and experience of Brackenridge would put $50,000 into a purchase of bonds of a town in a distant State without any inquiry as to their history or value, or that he should make such a purchase without knowing whether he was buying for himsel for some one else, or that he would enter into and close such a transaction so summarily and carelessly as to take no notice of the fact that he was getting $10,000 or $12,000 of coupons for nothing, that his testimony would be rejected as incredible and untrue if its value were to be tested by this part of his narrative alone, but he further discredits himself by the transparent falsity of his testimony respecting the exchange of the bonds with the defendant Lytle. He attempts to represent that he made a veritable trade with the defendant, by which he acquired the interest in the ranch property for the bonds and parted with them absolutely to the defendant. The examination of this transaction necessarily involves the inquiry whether Lytle was a *bona fide* purchaser of the bonds, and the conclusion reached will dispose of the remaining issue in the controversy.

Whether there was a *bona fide* sale or exchange of the bonds between Brackenridge and Lytle by which, as the latter asserts, he became a *bona fide* holder of the securities is a question upon which the testimony of Lytle himself is extremely valuable. The defendant testifies that he is a stock raiser and in May, 1884, had a half interest in the ranch property, one McDaniels owning the other half; that he had been intimately acquainted with Brack-
231 enridge for several years; that they had been confidential friends and Brackenridge had been his financial backer. According to his testimony, the ranch property, exclusive of the stock upon it, was worth $150,000 or $160,000.

The following questions and answers embrace his entire testimony on his direct examination relative to the exchange:

"Q. State whether or not in the spring of 1884 you had any negotiation with him in regard to the purchase of the bonds mentioned in the complaint. And, if so, what was it? A. I bought these bonds from him some time in the spring of 1884. Q. State the transaction between you and him—what he said about the bonds and what was said about the price and what you paid for them. A. Merely that he would buy a third interest in my Frio property and pay me in bonds. I would take the bonds in payment. He would pay me $75,000 worth of bonds. He said the bonds were good. Knowing Mr. Brackenridge as I did and the business transactions I had with him at different times, I never made any inquiry about the bonds."

Upon his cross-examination the following questions and answers appears:

"Q. When was the first you knew anything about his having these seventy-five town of Lansing bonds—that you knew anything about his having anything to do with them? A. When the bonds were delivered to me. Q. Had there never been anything said to

you about them before? A. Not about these particular bonds. Q. Where were you when he told you about having these bonds? A. At his house. Q. And when he told you what—what did he tell you about the bonds? A. He said he had so many bonds—
232 he said he had $75,000 of bonds that he would give me for a third interest in my ranch—in the Frio ranch. He said the bonds were good. I told him all right, I would sell him the third interest. He said, All right; consider it a trade. Q. What else was said? A. That was all that was said. Q. Did he produce the bonds? A. No, sir; not then. Q. You had never seen them? A. I had not seen them. Q. You have told all *the* he said about them? A. Yes, sir. Q. How long was that before you consummated the bargain? A. The trade was consummated then. Q. There was no writing? A. No, sir."

The defendant further testified that about fifteen days later he signed a paper acknowledging the receipt from Brackenridge of $75,000 in bonds in payment for a one-third interest in the Frio ranch, and the bonds were then transferred to him at the bank of which Brackenridge was president. The bonds were not delivered, but Brackenridge directed the cashier to place the bonds to the credit of Lytle or hold them subject to Lytle's order, and it was not until two or three days subsequently that the defendant first saw the bonds, at which time Brackenridge was present and advised the defendant to send the coupons to New York for collection. The coupons were sent by him for collection to the same attorneys in New York city whom Brackenridge had previously employed. According to the testimony of Brackenridge, in the spring of 1884 he wanted to acquire an interest in the ranch and made the defendant an offer to purchase an interest. The following questions and answers comprise the substance of his testimony about the negotiations:

"Q. What took place between you on the subject? A. I
233 told him it would be better for me to take an interest in the ranch—a one-third interest. Q. What offer did you make him to pay for that interest? A. I offered to give him these Lansing bonds. I told him I did not want to pay cash for it, but I will give the Lansing bonds. I told him there were $75,000 in bonds; that I considered them good and worth as much as his property. Q. What did he say to that? A. He finally accepted the proposition; said, All right; we will do it. I think the final settlement of that was made at my house."

Brackenridge's testimony in respect to the transaction is substantially a reiteration of the narrative of Lytle, and these two are the only witnesses who testify in regard to it. The testimony of both is to the effect that Brackenridge made a proposition to Lytle to give him the bonds for the interest in the ranch, told him they were good, and the trade was promptly closed without any further bargaining and without any inquiry on the part of Lytle about the value of the bonds or why Brackenridge was willing to give $75,000 of bonds for an equivalent of $50,000.

The receipt which Lytle gave to Brackenridge bears date May

24, 1884, describes the bonds as "county bonds," and recites that the bonds are taken as "part payment" for a one-third interest in the Frio ranch and stock. No conveyance of the property was ever executed by Lytle or Lytle and McDaniels to Brackenridge, but in the latter part of the following January Lytle, McDaniels, and Brackenridge joined in articles of association as incorporators
234 of the San Antonio Ranch Company, and that the ranch was conveyed to the corporation. The certificate of incorporation recites that *that* the capital stock of the company is to be $500,000, divided into one thousand shares of $500 each. Subsequently scrip for 290 shares of the stock of this company, "full paid and non-assessable," were issued to Brackenridge. This scrip is all that Brackenridge has to produce for the ranch interest for which he claims to have exchanged the bonds. So far as the truth can be ascertained from the rambling, incoherent, and contradictory statements of Brackenridge and Lytle upon cross-examination, it would seem that this 290 shares represents nothing more than the one-third interest which Brackenridge had in the firm assets of Lytle & Co. before the date of the pretended exchange of the bonds. It appears that Brackenridge had been a partner of Lytle and McDaniels, under the firm name of Lytle & Company, for a year or two prior to the time of the alleged exchange; had put in $60,000 or $66,000, and that the assets of the firm represented an investment of $180,000. The Frio ranch was needed for the purposes of the business of the concern, and had been bought by Lytle and McDaniels before Brackenridge became a partner. At the time the San Antonio Ranch Company was organized all the assets of Lytle & Company consisted of cattle and this Frio ranch, and for the purposes of capitalization the cattle were estimated at $300,000 and the ranch at $200,000, thus making up the nominal capital stock of $500,000. It appears that $60,000 face value of the stock of the corporation has never been issued. Consequently, what was issued to Brackenridge comprised one-third of the issued
235 capital stock and is the equivalent of his interest in the assets of Lytle & Company, if the three were equal partners. That they were equal partners appears from the testimony of Lytle that he was entitled to one-third of the capital stock for his interest. Lytle states also that the $60,000 unissued stock represents property of Lytle and McDaniels, in which Brackenridge had no interest. It would seem therefore that Brackenridge never received anything for the bonds except stock to the amount of his one-third interest in the firm of Lytle & Company before the pretended purchase of the Frio property. No attempt has been made by the counsel for the defendant to elicit from either Brackenridge or Lytle an intelligible, explicit statement to explain how Brackenridge has received anything for the bonds. This significant omission strengthens the inference which the testimony fairly suggests that he never did get anything.

The narrative of the alleged exchange of the bonds between Brackenridge and Lytle, as testified to by them, is as full of improbabilities as is the story of Brackenridge in reference to his purchase

of the bonds of Stewart. It is incredible that Lytle would have given property which he asserts he considered worth $50,000 for bonds of which he knew nothing at all, without any inquiry about their history or value. It is incredible that he would have made such a bargain without the slightest deliberation and immediately when and upon the terms proposed by Brackenridge. It is incredible that a sane man would entertain the proposition to take such bonds, when offered at an enormous discount, without asking
236 why they were depreciated or why the seller wished to dispose of them, or that he would consider the matter at all without inquiring whether the interest had been paid in the past. But Lytle did not know, if his story is true, whether they were town bonds or county bonds, or *or* in what State the municipality was located which had created them. Before any transfer of the title of the ranch property was made Lytle had found out that the town would not pay the coupons and presumably had learned the history of the previous litigations from his attorneys. Nevertheless he would have it appear that he never complained of being misled or overreached by Brackenridge, and allowed the transaction to be consummated and Brackenridge to obtain the fruits of it as though he had not been deceived. The testimony suggests very persuasively that the pretended exchange was a mere sham, entered into in order to get the bonds in the hands of an ostensible *bona fide* purchaser. It is doubtful whether there was any real delivery of them to Lytle and whether his sending the coupons to the attorneys whom Brackenridge had previously employed was anything more than a mere matter of form. The conclusion is reached without the slightest hesitation that Lytle was not a *bona fide* purchaser of the bonds.

It was remarked by the supreme court in the case of Stewart against the town that "the testimony (introduced to establish the *bona fide* ownership of the plaintiff) is noticeable rather for what is omitted than for what was introduced." That remark is equally applicable to the present case. The suit involves a very con-
237 siderable sum of money and the previous litigations have appraised the counsel for the defendant of the necessity of making clear proof that Stewart or some earlier purchaser from Elliott, Collins & Company or Brackenridge or the defendant became a *bona fide* holder of the bonds. Nevertheless, the case of the defendant has been permitted to rest upon the flimsiest evidence, apparently without any effort to trace the history of the bonds until they came into the hands of Brackenridge, and without any attempt to fortify or explain the improbable narrative of Brackenridge and Lytle. The omission to call McDaniels as a witness or explain why he was not called is suggestive. Everything developed in the record is quite consistent with the theory that Stillman or some person whom he represents has the same interest now in the bonds which he had at the time that he first approached Brackenridge, and that neither Stewart nor Brackenridge nor Lytle ever really owned them.

It may be that Brackenridge really purchased the bonds of Stewart,

but if he did the circumstances of the purchase are so pregnant with suspicion as to justify the belief that if he was really ignorant of their history it was because it was intentionally so. The rule which shields a purchaser of commercial paper who has not bought *mala fides*, though he may have known facts and circumstances that should have caused him to suspect that it was subject to a defence in the hands of the seller, or by ordinary diligence could have ascertained the facts, does not protect a purchaser who willfully avoids making inquiry when circumstances of grave suspicion point
to a fraud. (Hamilton *v.* Vought, 34 N. J. (Law), 187.) As
238 is said by the court in Murray *v.* Lardner, 2 Wall., 121,
"guilty knowledge and willful ignorance alike involve the result of bad faith." When the suspicious circumstances are of a substantial character and speak unmistakably to a man of common intelligence the purchaser cannot safely assume to have been blind and deaf.

A decree is ordered directing the defendant to surrender up the bonds and coupons for cancellation and dismissing his cross-bill.

Indorsed: The Town of Lansing *vs.* Lytle. 5769 & 5689. Opinion—Wallace, J. Filed Mar. 19, 1889. W. S. Doolittle, clerk.

239 *Petition of Appeal.*

Circuit Court of the United States in and for the Northern District of New York.

THE TOWN OF LANSING *against* JOHN T. LYTLE. } In Equity. (5689.)

JOHN T. LYTLE *against* THE TOWN OF LANSING. } On Cross-Bill. (5709.)

To the honorable the Supreme Court of the United States:

The appeal of John T. Lytle, above named, respectfully showeth—

That the first of the above-entitled actions was commenced in the supreme court of the State of New York for the purpose of obtaining an injunction restraining him from bringing suit upon certain bonds and coupons issued by the town and held by him, and from transferring the bonds, and also for the purpose of obtaining a judgment canceling the bonds and coupons.

The cause was removed to the United States circuit court, and thereupon, on April 9, 1888, the defendant filed his cross-bill alleging the validity of the bonds and praying for a decree establishing such validity and requiring the town to pay the same.

That on April 26, 1889, a final decree was made and pronounced
in the cause wherein it was in substance adjudged and
240 decreed that the said cross-bill be dismissed and the relief prayed for in the complaint granted.

Wherefore this appellant appeals from the whole of said decree of

said circuit court of the United States and respectfully prays that the decree of the said circuit court and the bill, answer, cross-bill, and answer thereto, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said bill and granting the relief prayed for in said cross-bill, with costs, or such other decree as to the said Supreme Court shall deem just.

New York, June 4, 1889.

SHEARMAN & STERLING,
Solicitors for Appellant.

THOS. G. SHEARMAN,
EVERETT P. WHEELER,
Of Counsel.

Appeal allowed.
Dated June 4th, 1889.

WM. J. WALLACE.

Indorsed: The Town of Lansing *v.* John T. Lytle. 5689. John T. Lytle *v.* The Town of Lansing. 5709. Original petition of appeal to the U. S. Supreme Court by John T. Lytle. Filed Jun- 12, 1889. W. S. Doolittle, clerk.

241 *Bond.*

In the Circuit Court of the United States in and for the Northern District of New York, Session 1889.

THE TOWN OF LANSING *vs.* JOHN T. LYTLE. } 5689.

JOHN T. LYTLE *vs.* THE TOWN OF LANSING. } 5709.

Know all men by these presents that I, John T. Lytle, as principal, and Samuel S. Cortis, of the city of New York, and Richard J. Cortis, of Flatbush, L. I., as sureties, are held and firmly bound unto the above-named The Town of Lansing in the sum of five hundred dollars, to be paid to the said The Town of Lansing; to which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 31st day of May, 1889.

Whereas lately, at a circuit court of the United States in and for the northern district of New York, in a suit pending in said court between The Town of Lansing, plaintiff, and John T. Lytle, de-

fendant, and on cross-bill between John T. Lytle, plaintiff, and The Town of Lansing, defendant, a final decree was rendered against the said John T. Lytle, and the said John T. Lytle having taken
242 an appeal, which appeal has been allowed by the said circuit court, to the Supreme Court of the United States to reverse the said decree in the aforesaid suit:

Now, the condition of the above obligation is such that if the said John T. Lytle shall prosecute his said appeal to effect and answer all damages and costs if he fails to make his appeal good, then this obligation to be null and void; otherwise to remain in full force and virtue.

JOHN T. LYTLE,
By JOHN A. GARVER, *Att'y.*
SAM'L S. CORTIS.
R. J. CORTIS.

Sealed and delivered in the presence of—
GEO. H. BARNES,
As to Sam'l S. Cortis, R. J. Cortis, and John A. Garver, att'y.

STATE OF NEW YORK, }
City and County of New York. }

On the 4th day of June, 1889, before me personally came John A. Garver, one of the attorneys for John T. Lytle, to me known and known to me to be the individual who, as such attorney, executed the foregoing instrument, and acknowledged that he executed the same as the act and deed of John T. Lytle therein described and for the purposes therein mentioned.

GEO. H. BARNES,
[L. S.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

243 STATE OF NEW YORK, }
City and County of New York. }

On the thirty-first day of May, 1889, before me personally came Samuel S. Cortis and Richard J. Cortis, to me known to be two of the individuals described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same.

GEO. H. BARNES,
[L. S.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Samuel S. Cortis, one of the sureties in the foregoing bond, being duly sworn, says that he is a resident of said State of New York and a freeholder in said State, and is worth the sum of one thousand

dollars over and above all debts and liabilities he owes or has incurred and exclusive of property exempt by law from levy and sale under execution.

SAM'L S. CORTIS.

Sworn to before me June 4th, 1889.

GEO. H. BARNES,
[L. S.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

244 STATE OF NEW YORK, }
City and County of New York, } *ss:*

Richard J. Cortis, one of the sureties in the foregoing bond, being duly sworn, says that he is a resident of said State of New York and a freeholder in said State, and is worth the sum of one thousand dollars over and above all debts and liabilities he owes or has incurred and exclusive of property exempt by law from levy and sale under execution.

R. J. CORTIS.

Sworn to before me June 4th, 1889.

GEO. H. BARNES,
[L. S.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

Indorsed: The Town of Lansing *v.* John T. Lytle. 5689. John T. Lytle *v.* The Town of Lansing. 5709. Bond. Approved June 4, 1889. Wm. J. Wallace. Filed Jun- 12, 1889. W. S. Doolittle, clerk.

245 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

To the Town of Lansing, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of New York, wherein John T. Lytle is appellant and you are appellee, to show cause, if any there be, why the decree rendered against said appellant, as in said appeal mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 6th day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

WM. J. WALLACE.

246 [Endorsed:] 5689. United States circuit court, northern district of New York. Town of Lansing *vs.* Lytle. 5689.

Lytle *vs.* Town of Lansing. 5709. Original. Citation. Shearman & Sterling, attorneys for John T. Lytle, 45 William street, N.Y. U. S. circuit court, N. D. of N. Y. Filed Jun- 12, 1889. W. S. Doolittle, clerk.

Due personal service of the within citation is hereby admitted, at Auburn, N. Y., this 10th day of June, A. D. 1889.

H. V. HOWLAND,
Sole Attorney for The Town of Lansing in the Within-Named Suits & Actions.

247 *Stipulation.*

United States Circuit Court, Northern District of New York.

THE TOWN OF LANSING *vs.* JOHN T. LYTLE. } In Equity.

JOHN T. LYTLE *vs.* THE TOWN OF LANSING. } Cross-Bill.

It is stipulated that the printed papers and evidence and documents contained in the records of the parties in the above cause or causes, upon which the same were heard and decided by said court, shall be taken in lieu of the original exhibits and papers and be regarded as the originals, and that all the other exhibits not printed in said records be omitted by the clerk in his return.

June 20th, 1889.

H. V. HOWLAND,
Proctor for Appellee.
SHEARMAN & STERLING,
Proctors for Appellant.

Indorsed: Lansing *vs.* Lytle. Stipulation. Filed Jun- 22, 1889. W. S. Doolittle, clerk.

248 UNITED STATES OF AMERICA, *Northern District of New York,* } *ss:*

I, William S. Doolittle, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 246, inclusive, contain a true and complete transcript of the record and proceedings had in said court, as stipulated, in the case of The Town of Lansing *vs.* John T. Lytle and John T. Lytle *vs.* The Town of Lansing (cross-bill) as the same remain on record and on file in said office.

In testimony whereof I have caused the seal of the said court to

Seal of the U. S. Circuit Court, Northern District N. Y.

be hereunto affixed, at the city of Utica, in the northern district of New York, in the second circuit, this 24 day of August, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and fourteenth.

W. S. DOOLITTLE, *Clerk.*

Endorsed on cover: Case No. 13,621. N. New York C. C. U. S. No. 407. John T. Lytle, appellant, *vs.* The Town of Lansing. Filed August 30, 1889.

147 U.S. 59

Office Supreme Court U. S.
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CLERK.

SUPREME COURT OF THE UNITED STATES.

NOVEMBER TERM, 1892.

No. 79.

JOHN T. LYTLE,

Plaintiff in Error,

against

THE TOWN OF LANSING,

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

THOMAS G. SHEARMAN,
EVERETT P. WHEELER,
Of Counsel for Plaintiff in Error.

C. G. BURGOYNE, Cor. Centre and Walker Sts., New York.

SUPREME COURT OF THE UNITED STATES.

JOHN T. LYTLE,
Appellant,

AGAINST

THE TOWN OF LANSING.

No. 79.

BRIEF FOR APPELLANT.

Statement.

This is an appeal from a decree of the U. S. Circuit Court for the Northern District of New York, made upon the pleadings and proofs in an action brought by the Town of Lansing against John T. Lytle, and a cross-action brought by him against the town.

The original action was brought in the Supreme Court of the State of New York for an injunction restraining Lytle from bringing suits against the Town upon certain coupons and bonds issued by it and held by him, and from transferring the bonds, and also for a judgment canceling the bonds and coupons. At the time the answer was filed, the cause was removed into the Circuit Court, and Lytle filed his cross-bill in that Court alleging the validity of the bonds and praying for a decree establishing such validity, and requiring the town to pay the same.

The complaint in the State Court is at pages 2–9, and the answer is at pages 14–16. The town filed a special

replication to this answer, which is at pages 17–19. The cross-bill which was filed by consent of the parties (Record, p. 20), is at pages 21–26. The answer is at pages 27–37. The usual general replication was filed to this answer (p. 37). By stipulation between the parties, the evidence in these suits was put in from the evidence which had been previously taken in common-law suits upon coupons from the same bonds (Ex. B, pp. 42, 43). The Town of Lansing put in all the evidence that had been taken by either party in Brackenridge vs. Lansing, (an action at law which had been previously tried) in regard to the original issue of bonds, the proceedings under which they were issued, the proceedings upon the *certiorari*, as well as the testimony relating to the hypothecation of these bonds by the railroad company to Leonard, Sheldon and Foster, and the transfer to Elliott, Collins & Co. (pp. 46–91).

The evidence on behalf of Lytle consists of the depositions of himself (pp. 93–112), of George W. Brackenridge, the party from whom he bought (pp. 113–127), and Abraham Luria (p. 142). The exhibits put in evidence by Lytle and Brackenridge are printed on pages 127–141. These were produced pursuant to the stipulation at page 92.

The proceeding in which the bonds were issued was pursuant to Chapter 907 of the Laws of the State of New York for 1869 (Session Laws, Vol. 2, p. 2303). This was afterwards amended. The material portions of the statute are printed under the Second Point.

Parties, claiming to be a majority of taxpayers and to own a greater part of the taxable property of the Town of Lansing, petitioned the County Judge of Tompkins County for an order that bonds of the town, to the amount of $75,000, should be issued, to enable it to subscribe and pay for that amount of the capital stock of the Cayuga Lake Railroad Company. The affidavit annexed to the petitions shows that "they contain the names as petitioners therein of

a majority of the taxpayers of said Town of Lansing," &c. (p. 57).

An order was made December 10, 1870, for the publication of the notice required by law (pp. 57, 58) This notice was duly published, as required by law (*Ibid.*, pp. 58, 59). After hearing the petitioners and their opponents at the appointed time (December 24, 1870), the County Judge rendered a judgment on March 2, 1871, reciting that he had taken due proof of the signing and execution of the said petition by the petitioners; that the petitioners were taxpayers in said Town of Lansing; that they constituted and represented a majority of such taxpayers, as shown upon the last preceding tax list or assessment roll, and represented a majority of the taxable property upon such tax list, and that full proof as to the allegations of the petition had been taken, and he thereupon adjudged and determined that the sum of $75,000, mentioned in said petition, did not exceed 20 per cent. of the whole taxable property of said Town of Lansing, as shown by the last preceding tax list or assessment roll of said town; and that all the requirements of law respecting the creation and issuing of the bonds of said Town of Lansing, to the amount of $75,000, for investment of the same or the proceeds thereof in the stock or bonds, or both, of the Cayuga Lake Railroad Company had been fully complied with by said petitioners. And he thereupon appointed three Commissioners, Knettles, Hall and Clark, who were freeholders, residents and taxpayers in the Town of Lansing, to cause to be made and executed bonds of said town to the amount and for the purpose set forth in said petition, and to perform such further and other duties as should be required of them by law (pp. 61–63).

An application was thereupon made by the dissatisfied parties to the Supreme Court for a writ of *certiorari*. The writ was granted March 27, 1871. The County Judge was the sole defendant (pp. 66, 67), and the only

person represented by counsel before the Supreme Court (p. 71, marginal page 116).

The writ of *certiorari* was never served upon the treasurer of the railroad company, nor upon any officer of that company; and no officer of the company was represented in that case (p. 86). The return to the writ is dated September 1, 1871, but was not filed until January 22, 1872 (pp. 68, 69).

On May 7, 1872, the General Term reversed the proceedings, and judgment of reversal was entered May 21, 1872 (pp. 71, 72).

After the allowance of the writ and before the return was filed (*no stay of proceedings having been asked*) the Commissioners executed the bonds and delivered them to Tallmadge Delafield, the treasurer of the railroad company; and he delivered capital stock of the railroad company, to the amount of $75,000, to the Commissioners (p. 81). He at once took the bonds to Leonard, Sheldon & Foster, bankers, in New York; and they lent to the company, on the bonds, $50,000. The railroad company never received the bonds back (p. 81, marg. p. 131).

Leonard, Sheldon & Foster sent the bonds to Elliott, Collins & Co., direct. They did not go through the hands of the railroad company (*Ibid.*, p. 82, marg. p. 132). This was done on the written order of Mr. Delafield, as treasurer of the railroad company. He testifies (p. 84):

"Elliot, Collins & Co. took up the loan in New York. It was simply a transfer of the original transaction from Leonard, Sheldon & Foster to Elliott, Collins & Co., and it was done by me, as treasurer of the Cayuga Lake Railway Company."

With money borrowed from Elliott, Collins & Co., the treasurer paid the loan of Leonard, Sheldon & Foster. "They advanced the money to the New York house." "The transaction was a transfer of the loan from one to the other" (p. 82, marg. p. 132).

Neither Leonard, Sheldon & Foster nor Elliott, Collins & Co., had any notice, actual or constructive, of the proceedings on the *certiorari* (p. 77, Q. 16, p. 85).

On February 8, 1873, Elliott, Collins & Co. sold the bonds. A report of the sale was received by mail by the treasurer of the railroad company about February 8, 1873 (pp. 81, 82). At that time Elliott, Collins & Co. credited the railroad company with the net proceeds of the sale of the bonds, to wit, $54,337.50. These proceeds paid the loan and left a credit to the railroad company of $4,745.83 (p. 82). "The railroad company spent upon the construction of its railroad the sum of $50,000, which it received from Leonard, Sheldon & Foster" (p. 82, marg. p. 132). The Cayuga Lake railroad was built all the way from Cayuga Bridge to Ithaca; and has been running ever since. The road was constructed through the Town of Lansing. It is a good substantial road (p. 85).

It does not appear in the case to whom the bonds were sold by Elliott, Collins & Co. The next evidence respecting them is that they were in New Orleans, in February, 1882, in the possession of J. J. Stewart, and were purchased of him by Brackenridge. Brackenridge gave for them a check for $50,000, drawn by the San Antonio Bank on the Louisiana National Bank (pp. 116, 139), which was paid (pp. 142, 143). He afterwards, in May, 1884, sold them to John T. Lytle, a stockman in Texas, for a one-third interest in the Frio Ranch, which, including the cattle and stock, was worth $160,000. The evidence as to these purchases will be fully considered under the eighth, eleventh and twelfth points.

Assignment of Errors.

The decree as made (pp. 38–40) required John T. Lytle to surrender for cancellation seventy-five bonds issued by the Town of Lansing, and adjudged that he was not a *bona fide* holder of them, that he had not

paid any consideration for them, and that no prior holder had been a *bona fide* holder for value, and it enjoined Lytle from selling or transferring the bonds or coupons and from bringing any action upon them. It dismissed the cross-bill with costs and awarded costs to the town.

In every particular the decree was erroneous. It should have adjudged:

1. That George W. Brackenridge was a *bona fide* holder of the bonds and coupons in question, being the coupons which fell due July 1, 1884, and all subsequent coupons.

2. That Lytle purchased the same from Brackenridge, in good faith and for value, before maturity.

3. That the town should pay to him the coupons which were due at the time of the decree, with interest from the maturity thereof, respectively.

4. That the town should pay to him or his assigns, from time to time, the coupons which should fall due thereafter, and the principal of the bonds when it should mature.

POINTS.

FIRST.

Bonds Good on Their Face.

The bonds showed no defect upon their face. They purported to be issued by virtue of an Act of the Legislature of the State of New York, which was recited, and which, as stated on the face of the bonds, authorizes the Town of Lansing, in the County of Tompkins, to subscribe to the stock of the Cayuga Lake Railroad Company, and to issue bonds in payment therefor. They set forth that the Commissioners, on the faith and credit, and on behalf of said town, for value received, promised to pay to the bearer the sum of $1,000 on the first day of January, 1902, with interest at seven per cent. from and after the first day of January, 1872 (pp. 89, 90). Thus it will be seen that they were payable exactly thirty years from the date from which the interest began to run. These bonds have all the properties of commercial paper, and they belong to that category of contracts.

"This Court has uniformly held, when the question has been presented, that where a corporation has lawful power to issue such securities, and does so, the *bona fide* holder has a right to presume the power was properly exercised, and is not bound to look beyond the question of its existence. A corporation is liable for the acts of its servants, while engaged in the business of their employment, to the same extent that individuals are liable under like circumstances."

Orleans vs. Platt, 99 U. S., 676.

In Lewis vs. Commissioners, 105 U. S., 739, the validity of such bonds in the hands of a *bona fide* holder was sustained, although their issue was fraudulent, and the corporation derived no benefit therefrom.

SECOND.

Statutes Authorizing Those Bonds.

The bonds were authorized to be issued by a judgment of the County Judge of Tompkins County in a judicial proceeding had pursuant to Chapter 907 of the Laws of New York for 1869 (Session Laws, Vol. 2, p. 2303). This act was amended as to the counties to which it applied by Chapter 507, Session Laws, 1870, Vol. 2, p. 1148. After the judgment was rendered by the County Judge Chapter 283, Laws, 1871, was passed amending the act in other particulars (Vol. 1, p. 558). The material portions of the act in force when the judgment was rendered are as follows:

"SECTION 1. Whenever a majority of the taxpayers of any municipal corporation in this State, whose names appear upon the last preceding tax list or assessment roll of said corporation as owning or representing a majority of the taxable property in the corporate limits of such corporation, shall make application to the County Judge of the county in which such corporation is situated, by petition verified by one of the petitioners, setting forth that they are such a majority of taxpayers, and represent such a majority of taxable property, and that they desire that such municipal corporation shall create and issue its bonds to an amount named in such petition (but not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax list and assessment roll), and invest the same or the proceeds thereof in the stock or bonds (as said petition may direct) of such railroad company in this State as may be named in said petition, it shall be the duty of said County Judge to order that a notice shall be forthwith published in some newspaper in such county, or, if there be no newspaper published in said county, then in some newspaper printed in an adjoining county, directed to whom it may concern, setting forth that, on a day therein named, which shall not be less than ten days nor more than thirty days from the date of such publi-

cation, he will proceed to take proof of the facts set forth in said petition as to the number of taxpayers joining in such petition, and as to the amount of taxable property represented by them. And any solvent, moneyed, manufacturing, or other corporation or company formed under the laws of this State, and being assessed on real or personal property therein, shall have all the rights and privileges under this act, so far as property representation is concerned, as other taxpayers. And the Board of Directors or trustees of any such corporation or company may apply to the County Judge by petition in the same manner as herein provided for other taxpayers. The words "municpal corporation," when used in this act, shall be construed to mean any city, town or incorporated village in this State.

"SECTION 2. It shall be the duty of the said Judge at the time and place named in the said notice to proceed to take proof as to the said allegations in the said petition; and if it shall appear satisfactorily to him that the said petitioners or the said petitioners and such other taxpayers of said town as may then and there appear before him and express a desire to join as petitioners in said petition, do represent a majority of the taxpayers of said municipal corporation, as shown by the last preceding tax list or assessment roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine and cause the same to be entered of record. *And such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State.*"

"SECTION 3. If the said Judge shall adjudge and determine that such petitioners do represent a majority of such taxpayers as aforesaid, and a majority of such taxable property as aforesaid, it shall be his duty forthwith to appoint and commission three persons who shall be freeholders, residents and taxpayers within the corporate limits of such corporation, to be Commissioners for the purposes hereinafter named. The said Commissioners shall hold their offices for five years, and until others are appointed by the County Judge of said county, and shall, before entering upon the duties of their office, each make oath faithfully to discharge all the duties thereof. All vacancies in such commission

shall also be filled by said County Judge as they occur. Said Commissioners shall each receive the sum of three dollars per day for each day actually engaged in the discharge of their duties, and their necessary disbursements to be audited and paid by the usual disbursing officer of such municipal corporation. A majority of such Commissioners, at a meeting of which all have notice, shall constitute a quorum, and may exercise the powers of the commission.

"SECTION 4. It shall be the duty of Commissioner, with all reasonable dispatch, to cause to be made and executed the bonds of such municipal corporation, attested by the seal of such corporation affixed thereto, if such corporation has a common seal; and if not, then by their individual seals, and signed and certified by said Commissioners, who are hereby authorized and empowered to affix such common seal thereto, and to so sign and certify such bonds. Such bonds shall become due and payable at the expiration of thirty years from their date, and shall bear interest at the rate of seven per cent. per annum, payable semi-annually, and shall not exceed in amount twenty per cent. of the entire taxable property within the bounds of said municipal corporation as shown by said tax list, nor shall they exceed in amount the amount set forth in such petition. The said bonds shall also bear interest warrants corresponding in number and amounts with the several payments of interest to become due thereon, but the Commissioners may agree with any holders to register any such bonds, in which case the interest warrants on the registered bonds shall be surrendered, and the interest shall be payable only on the production of the registered bond, which shall then be transferable only on the Commissioners' records. The savings banks of this State are authorized to invest in said bonds, not to exceed ten per cent. of their deposits."

(The rest of this section relates to a sinking fund for the redemption of the bonds.)

"SECTION 5. Such Commissioners are further empowered and directed to subscribe in the name of the municipal corporation which they represent to the stock or bonds of the railroad company named in such petition (as the petition may direct), to an amount

equal to the amount of bonds so created by them, and to pay for the same by exchanging the said bonds therefor at par; or they may, at their discretion, sell and dispose of the said municipal corporation bonds so created by them at rates not less than par, and invest the proceeds thereof in such stock or bonds of such railroad company as may be directed in said petition. They shall represent, either in person or by proxy, such municipal corporation at all meetings of such railroad bondholders or stockholders." (The rest of this section relates to a sale of the stock or bonds received by the Commissioners.)

THIRD.

Judgment Vacating Bonds Erroneous.

While we concede that the judgment vacating these bonds bound the railroad company, although erroneous, yet we ask this Court, in favor of a *bona fide* holder, to consider that the decision was wrong, that it was founded upon purely technical reasons, and that it erred, even upon them. The town is relying upon strict technicality, without a particle of real merit, in law or in natural justice.

The opinion of the General Term of the Supreme Court of New York, which reversed the order of the County Judge, is reported under the name of People vs. Van Valkenbergh, 63 Barb., 105. This clearly shows that no objection was or could be made to the issue of these bonds upon their merits.

I. The first ground stated for this decision was that the certificate of incorporation of the Cayuga Lake Railroad Company was defective, in that it did not sufficiently describe the counties through which the

road was to pass. This was clearly erroneous under the decisions of the highest Court of New York. These have established that a corporation *de facto* can borrow money, take title to land and perform all the functions of a corporation *de jure*.

In Eaton vs. Aspinwall, 19 N. Y., 119, 121, the Court say:

> The right of a corporation to sue cannot be inquired into collaterally (McFarlan vs. The Triton Ins. Co., 4 Denio, 392–397). Thus it will be seen that this corporation, though not a valid corporation in point of law, may carry on its enterprises, have its days in court, and divide its revenue among the holders of the shares of its capital, until the State shall interpose and ask that it be dissolved; and that the only real necessity of complying with the statute in relation to the payment of the ten per cent. was to prevent proceedings in behalf of the people to put an end to its corporate functions.

In Buffalo and Alleghany R. R. vs. Cary, 26 N. Y., 75–77, the judgment of the Superior Court of Buffalo was affirmed, without an opinion. The opinion of the Court below, given in the report, is as follows:

> The defendant contends that the plaintiff's organization is defective, because the affidavit annexed to the articles of association does not contain the allegation required by the statute "that it is intended in good faith to construct or to maintain and operate the road mentioned in the articles of association," and that it is not therefore a corporation. The articles of association are in due form, and the affidavit annexed to them, while it does not come up to the requirement of the statute in the particular specified, is colorable. The articles and affidavit were filed and recorded in the office of the Secretary of State; the capital stock was subscribed and partly paid in; the route of the road was surveyed and located; the right of way obtained; a contract for the construction of the whole road entered into, and liabilities in-

curred which have not been satisfied. This was sufficient to constitute the plaintiff a corporation *de facto*, so that neither it nor its stockholders can object that it is not strictly a corporation *de jure*.

I am of the opinion that, under this and similar general acts for the formation of corporations, if the papers filed, by which the corporation is sought to be created, are colorable, but so defective that in a proceeding on the part of the State against it it would for that reason be dissolved, yet by acts of user under such an organization it becomes a corporation *de facto*, and no advantage can be taken of such defect in its constitution, collaterally, by any person. Any other rule, it seems to me, must be fraught with serious consequences and great public mischief.

To the same effect are the following cases:

Chubb vs. Upton, 95 U. S., 665.
Sanger vs. Upton, 91 U. S., 56.
Wallace vs. Loomis, 97 U. S., 146.
Matter of N. Y. Elevated R. R. Co., 70 N. Y., 338.
Methodist Church vs. Pickett, 19 N. Y., 482.
Bank of Toledo vs. International Bank, 221 N. Y., 542.
Holmes vs. Gilliland, 41 Barb., 588.
Mechanics' Building Association vs. Stevens, 5 Duer, 676.
Winget vs. Quincy Association, 128 Ill., 67.

II. The General Term also held that the petition must direct whether the bonds of the town or their proceeds should be invested in the bonds or stock of the railroad company. This was a purely technical point, and devoid of merit. The petition prayed that the town invest the bonds, or the proceeds thereof, "in the stock or bonds, or both, of the Cayuga Lake Railroad Company" (p. 46). This was a direction from the petitioners to the Commissioners to determine how the proceeds should be invested. The petitioners might well think that the Commissioners could decide this

question more intelligently than they. This was a substantial compliance with the statute.

III. The General Term also held "that it is not clearly shown that a majority of the taxpayers have signed the petitions." This was proved by an affidavit of James A. Burr annexed to the petitions and thus forming a part of them (p. 57), who swears that the petition "is true of his own knowledge and contains the names as petitioners therein of a majority of the taxpayers of said Town of Lansing, &c." *This was not denied by the contestants* (see their petition p. 60). Both parties were fully heard before the County Judge (p. 62, marg. p. 101). He recites in his judgment that he had "taken due proof of the signing and execution of said petition by the petitioners whose names are signed thereto, and that said petitioners were taxpayers of said Town of Lansing, as shown by the last preceding tax list or assessment roll of said town, and that said petitioners do constitute and represent a majority of said taxpayers, as so shown, &c.," and judgment is rendered accordingly (pp. 62, 63).

IV. It thus appears that the General Term erred in disposing of all three of the purely technical grounds on which the reversal proceeded. If the railroad company had been a party to those proceedings, no doubt it would have appealed to the Court of Appeals from the adverse decision of the General Term. This, however, it could not do. The County Judge had no interest in prosecuting such an appeal. The appellee's claim, therefore, really is that the appellant is to be prejudiced by an erroneous decision in a suit to which he never was a party. Such a claim is manifestly unjust.

FOURTH.

Bonds Lawfully Issued.

Neither the Railroad Commissioners nor the railroad company acted improperly or irregularly with respect to the issue of the town bonds. The Commissioners performed their plain duty in issuing these bonds. The railroad company exercised its plain right in accepting the bonds and issuing its stock in exchange therefor. The granting of the writ of *certiorari* did not affect the rights or duties of either the Railroad Commissioners or the railroad company. As the bonds were issued before any decision upon the writ was made, they were regular and valid in their inception.

I. It is clear that, if the order appointing the Commissioners was valid, their action in issuing bonds was valid. The whole object of creating the office of Railroad Commissioners was to enable them to issue these bonds. Section 4 of the statute under which they were appointed and the order appointing them required them to issue these bonds "with all reasonable dispatch." They had no option.

II. The railroad company had a perfect right to accept these bonds, unless there was something in the granting of a writ of *certiorari* which took away that right.

III. The writ of *certiorari* made no difference either to the Commissioners or to the company. Neither of these parties was made a party to the *certiorari* proceedings. The fact that they heard that such proceedings had been taken could have no legal effect upon their rights or their duties. They had no control over the proceedings, which might have been carried along for

years, in spite of their anxiety to bring them to a conclusion, or could have been disposed of adversely to their views, immediately, by the mere acquiescence of the County Judge. There can be no duties, where there are no correlative rights. It is true that, by a judgment in the *certiorari* proceedings, the office and powers of the Railroad Commissioners could be annulled, without giving them a chance to be heard ; but it is equally true that, until such a judgment was rendered, the Commissioners had no right to assume that it would be rendered, and were neither required nor permitted by the law under which they were appointed to speculate upon any such possible result. Their duty was peremptory, to proceed at once, leaving the Courts to decide at their leisure whether their action should be annulled or not. The judgment had "the same force and effect as other judgments in courts of record" (Section 2 of act quoted under Second Point).

Any action taken by the Commissioners while this judgment was in force was sufficient to transfer title, and this title would not be affected by a subsequent reversal of the judgment.

Hess vs. Hess, 117 N. Y., 306.
Day vs. Bach, 87 N. Y., 56.

IV. This argument cannot be answered by pointing out the inconvenience and danger of allowing Commissioners in such a case to proceed and bind the town, when it is possible that their acts will be eventually set aside. The law of New York, as it existed at that time, provided an ample remedy in such cases. It was expressly enacted that the Supreme Court should "have power at any time, by injunction, to prevent the issue of such bonds or any part thereof, on notice and for good cause shown ; and any Judge of said Court may grant a temporary injunction until such motion can be heard."

Laws 1871, p. 2119, Ch. 925, Sec. 5.

V. In this case therefore a preliminary injunction might have been procured, forbidding the Commissioners to issue the bonds, and the railroad company, if it received them, from parting with them, until the case made by the *certiorari* was finally brought to a close. This would have involved only an ordinary exercise of equity jurisdiction.

State of Illinois vs. Delafield, 8 Paige, 527; s. c. on appeal, 2 Hill, 160.

So, when suits were brought by Stewart, an injunction could have been obtained, restraining him from selling his bonds. Such an injunction was in fact obtained against Lytle in this very suit.

The omission to obtain it sooner was gross laches. This negligence is the source of all the difficulties of the Town of Lansing touching the bonds. The loss, if any shall ensue, will be due, not to the law or its administration, but to the supineness of the Town and the contestants.

County of Ray vs. Van Syckle, 96 U. S. 675.,

VI. Under these circumstances, the familar rule applies that, where one of two innocent persons must suffer a loss, and one of them has, by any negligence, delay or other act or omission, contributed to produce the loss, it must fall upon him and not upon the other party.

Orleans vs. Platt, 99 U. S., 676.
Merchants' Bk. vs. State Bank, 10 Wall., 604.
Hern vs. Nichols, 1 Salk., 289.

VII. There was nothing in the pendency of the proceedings upon the *certiorari* which should alter the rule just cited.

"The doctrine of *lis pendens* has no application to commercial securities. The County Judge was an officer charged by the law with the duty of deciding

whether the bonds could be legally issued; and his judgment was conclusive, until reversed by a higher Court. The plaintiff had no notice, actual or constructive, of the proceedings in the case, subsequent to the first judgment, and is in nowise affected by them."

Orleans vs. Platt, 99 U. S., 676-682.

FIFTH.

Negligence of Purchaser immaterial.

The decision below rests upon the assumption of negligence on the part of the purchaser of these bonds. But a purchaser of negotiable paper is not bound to make any inquiry; and even gross negligence on his part in making the purchase will not defeat his recovery.

Murray vs. Lardner, 2 Wall., 110.
Seybel vs. Nat. Currency Bank, 54 N. Y., 288.
Welch vs. Sage, 47 N. Y., 143.
Chapman vs. Rose, 56 N. Y., 137, 140.
Colson vs. Arnot, 57 N. Y., 253, 270.
National Bank vs. Young, 41 N. J. Eq., 531, 538.

"It is a general rule that, when a holder of a negotiable instrument, regular on its face and payable to bearer, produces it in a suit to recover its contents, and the same has been received in evidence, there is a *prima facie* presumption that he became the holder of it for value, at its date, in the usual course of business."

Pana vs. Bowler, 107 U. S., 529, 542.

To the same effect are

Murray vs. Lardner, 2 Wall., 110.
Bank of Pittsburgh vs. Neal, 22 How., 96.
Collins vs. Gilbert, 94 U. S., 753.
Brown vs. Spofford, 95 U. S., 474.
Swift vs. Smith, 102 U. S., 442, 444.

In the last case the Court say :

"One who purchases such paper (mercantile paper) from another who is apparently the owner, giving a consideration for it, obtains a good title though he may know facts and circumstances that cause him to suspect, or would cause one of ordinary prudence to suspect, that the person from whom he obtained it had no interest in it or authority to use it for his own benefit, *and though by ordinary diligence he could have ascertained those facts.*"

In Goodman vs. Simonds, 20 How. U. S., 343, the Court say (p. 366) :

"When it is proposed to impeach the title of a holder for value by proof of any facts and circumstances outside of the instrument itself, he is then to be affected, if at all, by what has occurred between other parties, and he may well claim an exemption from any consequences flowing from their acts, unless it be first shown that he had knowledge of such facts and circumstances at the time the transfer was made. *Nothing less than proof of knowledge of such facts and circumstances can meet the exigency of such a defense.*"

In Belmont Branch Bank vs. Hoge, 35 N. Y., 65, the rule is thus stated by the Court (p. 68) :

"The rights of the holder are to be determined by the simple test of honesty and good faith, and not by mere speculation as to his probable diligence or negligence."

SIXTH.

Burden of Proof of Bad Faith on the Town.

The Court below practically put the burden of proof of *good faith*, as well as of value, upon Lytle. This was erroneous. Ordinarily, the possession of negotiable

paper is sufficient evidence that the holder is a *bona fide* purchaser; but where it is proved that there was fraud or illegality in the inception of the paper, this presumption is not sufficient. It is incumbent upon the holder to prove that he paid value. To that extent, the burden of proof is upon him. But, when he has established the fact that he is a purchaser for value, it is not incumbent upon him to prove further that he took in good faith and without notice of the fraud or illegality complained of. On the other hand, purchase for value having been proved, the burden of proof upon the question of good faith shifts, and it becomes incumbent upon the defendant to show bad faith on the part of the purchaser.

It was so held by the Superior Court of the City of New York in 1855, DUER, HOFFMAN and SLOSSON, JJ., in the case of Hart vs. Potter (4 Duer, 458).

That action was brought upon a promissory note. There was proof in that case that the note was obtained from the maker by fraud. The Court, in discussing this question, say:

> "In order to meet the defense that Mayfielder had obtained the note from the maker by fraud, the plaintiff was bound to prove that it was delivered to him for value, and before its maturity. That it was passed into his hands before its maturity was clearly proved; and, although the fact that he gave value for it was not conclusively proved, the proof was quite sufficient to sustain the verdict. The Judge would certainly have erred had he withdrawn the question from the jury.
>
> "Proof was, therefore, given of all the facts that, in order to establish his title and repel the defense of fraud, the plaintiff was bound to prove. It is a great mistake to suppose that he was bound to prove, in addition, that he had no notice of the fraud. He was not bound to prove a negative. The burden of proving facts sufficient to charge him with notice rested on the defendant; and not a particle of evidence to justify the imputation was given" (p. 461).

The same doctrine was laid down by the Court of Appeals in 1875, where the opinion of the Court was delivered by ANDREWS, J.; and it was held, as stated in the head note, as follows:

> "Where, in an action upon negotiable paper, the plaintiff appears as a purchaser for full value before maturity, the burden of proving that he had notice of any fraud on the part of, or unauthorized use of the paper by, the original holder, is upon the defendant."
>
> Dalrymple vs. Hillenbrand, 62 N. Y., 5, 6.

The same doctrine was again laid down by the same Court, speaking through the same Judge, in 1877, in the case of Cowing vs. Altman (71 N. Y., 435). In that case the Court uses the following language (pp. 439, 440):

> "The transferee for value of a negotiable instrument, tainted by fraud or illegality in its inception, to maintain his action, is not bound to show, in addition to the fact that he received it for value before due, that he had no notice of the original infirmity in the paper. The burden of showing notice is upon the party who seeks to impeach his title" (Goodman vs. Harvey, 4 Ad. & El., 870; Byles on Bills, 118).

The same doctrine is laid down in Daniel on Negotiable Instruments (4th Ed., 821, § 819), as follows:

> "That when the holder responds by showing that he did acquire the instrument *bona fide*, for value, in the usual course of business, while it is current and under circumstances which do not operate as constructive notice of the facts which impeach the original validity, the defendant must then prove that he had actual notice of such facts; otherwise the holder's right to a recovery against him is perfected. This principle is obviously correct; for to require the plaintiff to show absolutely that he had no knowledge of facts would be to burden him with the necessity of proving an impossible negative."

To the same effect are

Jones on Corporate Bonds, § 188.
Byles on Bills, 118.
National Bank vs. Kirby, 108 Mass., 497.
Catlin vs. Hanson, 1 Duer, 309.
Davis vs. Bartlett, 12 Ohio St., 534.
Phelan vs. Moss, 67 Penn., 59.
First National Bank vs. Dawson, 78 Ala., 67.
Johnson vs. McMurray, 72 Mo., 278.

SEVENTH.

Leonard, Sheldon and Foster Title.

"If any previous holder of the bonds was a *bona fide* holder for value, the plaintiff can avail himself of such previous holder's position without showing that he himself paid value."

Montclair vs. Ramsdell, 107 U. S., 147.
Scotland County vs. Hill, 132 U. S., 107, 116.

Leonard, Sheldon and Foster, the original pledgees of the bonds, were *bona fide* holders for value. The plaintiff has acquired their title.

Appellee claims that this latter proposition was decided adversely to the appellant in Stewart vs. Lansing, 104 U. S., 505,

This Court in that case considered the right of John J. Stewart to recover on coupons which had been attached to the bonds which are in controversy in this suit. It did not overrule any of the decisions already cited. But it held that, upon the evidence in that record, Stewart was not shown to be a *bona fide* holder for value.

The record in the Stewart case contained very little evidence as to his title. The counsel who tried that case and argued it on appeal, chiefly relied on the point that judgment had been recovered by Stewart

in a previous suit, upon other coupons, which judgment the town had paid; and that this was conclusive as to the validity of Stewart's title. This point was overruled. This Court held that the determination, in one action, that the plaintiff was an owner, for value, of certain coupons sued on, did not estop defendant from claiming in another action that the plaintiff was not an owner, for value, of other coupons detatched from the same bonds. The evidence was so meagre that the Court say:

"It is by no means certain, from the testimony, whether such a man as the plaintiff is actually in existence."

This Court inferred from the testimony that the Philadelphia firm of Elliott, Collins & Co. took the bonds from the Company, and not from Leonard, Sheldon and Foster, the New York holders.

The Court also inferred, from the deposition of one of the firm of Elliott, Collins & Co., that that firm did not sell the bonds in question, and came to the conclusion, upon the record in that case, that the bonds only passed through the hands of that firm under terms which had been agreed upon by others. Both these points were essential to the decision. For if either Leonard, Sheldon & Foster or Elliott, Collins & Company sold their title to the bonds, it was not disputed that the purchaser acquired a good title. They were *bona fide* holders for value.

All these objections have now been removed by undisputed and conclusive evidence.

In the case at bar it distinctly appears, as already shown, that the original loan on the bonds was made by Leonard, Sheldon & Foster, of New York. The money paid was used by the company in building the road. Leonard, Sheldon & Foster transferred the bonds directly to Elliott, Collins & Co., and the latter firm sold the bonds directly, paid off the loan out of the proceeds, and credited the company with the balance. As pledgees they had a right to sell. As

transferees of Leonard, Sheldon & Foster they acquired the title of the first firm. This title was entirely valid. The transaction between that firm and the railroad company was made by the order of the County Judge, which was then in full force. All the facts attendant upon this transaction and the disposition of the money which the railroad company received were shown. It is true that the first pledgees did not advance the whole amount of the par value of the bonds. In this there is nothing unusual. It would have been extraordinary if they had done otherwise.

In this case it is also shown that Stewart was an actual person, well known in New Orleans and residing there. Brackenridge knew him, bought the bonds of him, and paid him $50,000 for them in cash (pp. 116, 120, 123). At page 126 (margin, p. 197) Brackenridge says: "I only meet him socially at the club in New Orleans. He stands well in New Orleans." This purchase by Brackenridge was made February 27, 1882 (p. 139), and before the decision in the Stewart case was made. That case was decided March 6, 1882.

We therefore submit that the plaintiff, in this case, fully supplied the defects pointed out by this Court, and that he was entitled to recover upon the title derived from the first pledgees of the bonds.

EIGHTH.

John T. Lytle, a purchaser in good faith and for value.

The next question in the case is this: Was John T. Lytle a purchaser in good fath and for value of the bonds of the Town of Lansing, mentioned in the pleadings? His testimony has been taken and is in substance as follows:

John T. Lytle has been in the business of stock-raising in the State of Texas ever since the summer of 1860 (pp. 93, 113). Before May, 1884, he acquired a tract of land on the Frio River of about 40,000 acres. It had a river front of about 15 miles, and was used for grazing purposes. At that time he had about 2,500 cattle on this ranch (*Ibid.*, pp. 93, 113). He had, before 1884, bought property of a similar character, and had known of purchases and sales by others, and in his judgment the value of this tract of land was at least $4 per acre, with the improvements. These improvements consisted of fences and "all necessary means for the successful care of cattle" (*Ibid.*, pp. 94, 107, 115). In May, 1884, Lytle had a half interest in this ranch; and one McDaniel owned the other half (p. 94).

George W. Brackenridge was a large real estate owner, owned gas and water works, and was president of the San Antonio National Bank where Lytle kept two accounts (pp. 94, 113, 119). They were "confidential friends" (p. 98). Brackenridge, McDaniel and Lytle had a joint interest in cattle in Maverick County since February, 1883 (pp. 96, 104, 120). Brackenridge "had no interest in the Frio Ranch" (pp. 104, 110). He "knew that the business was profitable" (p. 111).

In the spring of 1884, these two men had a negotiation in regard to the purchase of an interest in the Frio Ranch for the bonds mentioned in the pleadings. Brackenridge says of the Frio Ranch (pp. 113, 114):

"It was one of the best ranches in the country. I had a cattle interest, but no real estate interest. * * * I spoke to him (Lytle) frequently about it, indirectly. We had a large cattle interest, but no ranch property. I wanted to obtain some real estate upon which the ranching could be done."

Accordingly, Brackenridge offered to buy a one-third interest in the Frio ranch and to give Lytle these Lansing bonds for that. Brackenridge's testimony on this subject is as follows (p. 114):

" Q. Did you make him any offer to purchase an interest in that ranch, and what took place between you on the subject?

" A. I told him that it would be better for me to take an interest in the ranch, a one-third interest?

" Q. What offer did you make him to pay for that interest?

" A. I offered to give him these Lansing bonds. I told him I did not want to pay cash for it, but I would give the Lansing bonds. I told him there were 75,000 of the bonds, that I considered them good, and worth as much as his property.

" Q. What did he say to that?

" A. He finally accepted the proposition; said, ' all right, we will do it.' I think the final settlement of that was made at my house.

" Q. Did you, at any time, deliver the bonds to him, and, if so, how soon after this conversation?

" A. I think I was starting to New York next morning, and that on my return, some few days afterwards, perhaps, I delivered the bonds to him. Rather, I told the assistant cashier, who has charge of the bonds and had them in the bank vaults, for him to turn them over; that they were now the property of John T. Lytle, and hold them subject to his order.

"I assured him that they were good" (p. 126).

Lytle's testimony is as follows (pp. 94, 95):

" Q. State the transaction between you and him; what he said about the bonds, and what was said about the price, and what you paid for them?

" A. Merely that he would buy a third interest in my Frio property, and pay me in bonds. I would take the bonds in payment. He would pay me $75,000 worth of bonds. He said the bonds were good. Knowing Mr. Brackenridge as I did and the business transactions I had with him at different times, I never made any inquiry about the bonds."

A written memorandum of this transaction was made ten or fifteen days after when the bonds were delivered (p. 100). It is printed at page 140, and is as follows:

"San Antonio, May 24, '84.

"Received of G. W. Brackenridge county bonds amounting to seventy-five thousand dollars, as part payment for a one-third interest in our Frio ranch & stock located on the Frio River, in Frio County, Tex.

"$75,000 bonds.

"Lytle & McDaniel."

Lytle, McDaniel and Brackenridge subsequently formed a corporation called "The San Antonio Ranch Company," for the purpose of conducting stock raising on ranches. The Frio ranch was conveyed to this corporation; and stock was issued to Mr. Brackenridge for his interest in it (pp. 95, 96). Its charter is on pages 140, 141. It was filed in the Department of State, State of Texas, January 29, 1885 (p. 141). Its capital stock is $500,000, divided into 1,000 shares of $500 each (pp. 140, 141). This stock represented cattle worth $300,000 (p. 122), of which, however, Lytle and McDaniel owned $60,000, in which Brackenridge had no interest (p. 106), and the 40,000 acres of land in the Frio ranch, valued at $5 an acre, or $200,000 (pp. 105, 122). This left $440,000—for the cattle ranch in Maverick County in which the three had been interested since February, 1883, and the Frio Ranch in which they had been interested since May, 1884.* Brackenridge received two certificates, one for 120 shares representing $60,000, that he had invested in the cattle (pp. 120, 121), and one for 170 shares, representing his interest in the Frio Ranch (p. 121), making 290 shares of the par value of $145,000 (Exhibits C, D, pp. 139, 140).

There was no understanding or agreement between Lytle and Brackenridge that Brackenridge should still retain an interest in the bonds. He had no interest in

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* The figures 146,666 in the margin of page 106 are probably Judge Wallace's computation of one-third of $440,000.

them, after the purchase by Lytle (foot of p. 96, top of p. 115).

Both Lytle and Brackenridge were subjected to a rigorous cross-examination by the counsel for the town of Lansing. We submit that there is nothing which tends in the slightest degree to impair their credibility. The cross-examination of Lytle shows that he and Brackenridge were on friendly terms; that Brackenridge, in his business as banker, had lent Lytle sums of money to be used in his business; that Lytle had been doing banking business with Brackenridge since 1871, and that they had had a coal mining interest together for three or four years (Lytle Record, pp. 97, 98). Brackenridge knew that the Frio ranch business was profitable (pp. 111, 112).

The bonds were delivered to Lytle and were left in the custody of the cashier of the San Antonio National Bank (pp. 100, 125, 126). At this time Lytle had no notice or information of any kind that there was any defense to the bonds or that they were not valid bonds (p. 96). He did not learn that the Town of Lansing claimed to have any defense to them until after he cut off the first series of coupons (p. 96). The coupons falling due July 1, 1884, and January 1, 1885, were on the bonds at the time Lytle bought them (p. 95). There were no other coupons attached to the bonds of prior date to the first of July, 1884 (p. 95). Lytle cut off the July coupons and sent them to Messrs. Shearman & Sterling for presentation and collection; and he subsequently cut off the January coupons and forwarded them to the same attorneys for collection (p. 95).

The only point that is even visible, made by the counsel for the Town on the cross-examination of Lytle, is that Lytle was getting bonds nominally worth $75,000 for property actually worth $50,000. But this is unimportant.

I. Neither of the premises is supported by the evidence. The ranch which Lytle was selling was not property of a fixed or definite market value. He and Brackenridge estimated the interest in it, which was conveyed, as worth *at least* $50,000 (p. 109). The property, as has been shown, was well improved. There were about 100 miles of fence (p. 107). Lytle estimated the entire property as worth $150,000 cash at the time of the sale (pp. 111, 112). It was subsequently fully stocked with cattle, and the whole capitalized at $500,000, and paid a dividend of three per cent. on that (pp. 106, 112), and Brackenridge received stock to the amount of $145,000 (pp.139, 140). The Court in judging of this transaction should put itself in the position of the parties. They were both Texans; they were dealing with property with which they were acquainted, within the limits of their own State. The same element of distance, which makes a Texas ranch seem less valuable to a New Yorker, would make the value of a New York town bond seem less to a Texan. It, therefore, would not be in the least surprising that a citizen of Texas should think a third interest in a ranch comprising 40,000 acres, partly stocked with cattle and well improved, worth fully as much as bonds of a small town in the State of New York, of the par value of $75,000. It must be remembered that such securities are not as available for borrowing money as well known securities. They have no market value in the true sense; that is to say, they are not dealt in on the market. Nobody would ever buy them, unless he expected to make money on them, or, in other words, unless he expected that he would be getting from them so large an interest as to compensate him for the disadvantage which would follow necessarily from paying out capital he had at the time and getting instead securities not immediately available. The question may be thus put: Would not a citizen of Texas, owning a well-improved and productive ranch, find it easier in Texas to

borrow money on that ranch than upon bonds of a small town in the State of New York? Brackenridge states this well on cross-examination (p. 129): "Being limited issues and only locally known." Lytle testifies in reference to such securities (p. 109): "You cannot realize money in Texas."

Another fact should be remembered in this connection. It is as well known in the West as in the East that not only towns, but even States, which have issued their securities to induce the construction of railroads, have subsequently sought most dishonestly to repudiate those obligations. This fact necessarily affects the market value of that whole class of securities. It could not, therefore, be expected that these Lansing bonds should be sold at par. In point of fact, it appears, from the testimony taken by the town that, when these bonds were first put upon the market and while the order of the County Judge allowing their issue was in full force, the railroad company was only able to borrow $50,000 upon the entire issue of bonds (p. 81); and when they were sold by Elliot, Collins & Co., in February, 1873, they brought only $54,337.50 (p. 82).

II. But, even assuming that Lytle supposed that he was making a good bargain and getting the bonds cheap, what is there in that to impeach his good faith? Was it ever seriously contended that a man who gave $50,000 for property worth $75,000 was a purchaser in bad faith? The Courts have sometimes considered gross inadequacy of consideration as evidence of fraud between parties in fiduciary relation with each other; but when was it ever heard that paying $50,000 for property worth $75,000 was gross inadequacy, especially when the parties were both of full age, and when no fiduciary relation existed between them?

The rule on this subject is well stated in Eyre vs. Potter (15 How. U. S., 42, 60):

"Again, it is clear that inadequacy of consideration is

not of itself a distinct principle of equity. The common law knows no such principle. The consideration, be it more or less, supports the contract. Common sense knows no such principle. The value of a thing is what it will produce, and it admits of no precise standard. One man, in the disposal of his property, may sell it for less than another would. If courts of equity were to unravel all these transactions, they would throw everything into confusion, and set afloat the contracts of mankind. Such a consequence would of itself be sufficient to show the injustice and impracticability of adopting the doctrine that mere inadequacy of consideration should form a distinct ground for relief. Still there may be such an unconscionableness or inadequacy in a bargain, as to demonstrate some gross imposition or some undue influence; and in such cases, courts of equity ought to interfere, upon satisfactory ground of fraud; but then, such unconscionableness or such inadequacy should be made out as would, to use an expressive phrase, shock the conscience, and amount in itself to conclusive and decisive evidence of fraud. *Vide* Story's Equity, Secs. 245, 246, and 9 Ves., 246; 10 *Ibid.*, 219; and other cases there cited."

To the same effect is

Follett's Heirs vs. Rose, 3 McLean, 332.

The rule as to negotiable paper is the same. It is thus laid down in Daniel on Negotiable Instruments, Vol. 1, p. 635, § 779:

"In general terms, it may be said that the consideration should be so utterly trifling as to bear upon its face the impress of fraud—to leave open no reasonable conjecture but that the purchaser must have known from the very nature of the facts that they could not have originated from any but a corrupt source."

Accordingly, it was held by the Supreme Court of Ohio that the payment of just half its face for a note of $2,500, secured by a mortgage, was no evidence of bad faith, and the purchaser was held to have bought *bona fide*, for value, and without notice.

Bailey vs. Smith, 14 Ohio St., 402.

And it was held by the Supreme Court of Pennsylvania that the payment of $100, for a note of $250 was not such an inadequate consideration as to justify the inference of fraud.

Phelan vs. Moss, 67 Penn., 59.

And this Court held that parties who purchased railroad bonds at prices ranging from thirty to seventy cents on the dollar were *bona fide* holders for value, though it was shown that the bonds were fraudulently issued.

Galveston R. R. vs. Cowdrey, 11 Wall., 459, 464, 478.

The whole line of cases which establish that a person who takes negotiable paper for an antecedent debt is a holder for value, by necessary inference, support this proposition. In many of those cases the debt for which the security was taken, or the security for such debt which was surrendered, was of very little value, but the Courts have never treated this as an important circumstance.

In Fairbanks vs. Sargent, 39 Hun, 588, the Court expressly refused to enter upon that inquiry, and held that the value of the security which in that case was surrendered was not an important element in the inquiry.

The attempt in the case at bar to import this circumstance is one which, if successful, would greatly restrict the transfer of negotiable commercial paper. To such an attempt the observation of the Supreme Court in Goodman vs. Simonds, 20 How., 343, 364, may be well applied:

"A course of judicial decision calculated to restrain or impede their fair and unembarrassed circulation would be contrary to the soundest principles of public policy."

III. It must be remembered that the charges in the

bill that the defendant Lytle is not a *bona fide* holder of the bonds in question are positively denied by him in his answer under oath (pp. 15, 16), and by his evidence on the stand (p. 96, marg. pag. 154). The plaintiff introduced no positive evidence whatever in support of these charges. Its whole case on the subject of fraud rests upon a criticism of the evidence given by Lytle and Brackenridge. Even if this evidence gave rise to a suspicion, which we insist it does not, the rule in equity is well settled as stated by Mr. Justice STORY, in Gould vs. Gould, 3 Story C. C., 516, 540 :

"It is not sufficient to raise suspicions of bad faith from the doubtful character of the claims. The plaintiffs must go farther ; they must establish the truth of the charge beyond any reasonable doubt and by evidence, not only competent, but credible."

To the same effect is Babbit vs. Dutton (14 Fed. Rep., 19). In this case Judge DRUMMOND says (p. 22) :

" Allegations of fraud should always be clearly proved, either directly or necessarily, by circumstances which clearly lead the mind of the Court to the conclusion that a iraud has been perpetrated."

It may be said that Lytle is an interested party, and his evidence therefore liable to suspicion and scrutiny. But he is corroborated, not only by Brackenridge, but by all the circumstances of the case. Copies of the certificates of stock, and the charter of the San Antonio Ranch Company are produced, and there is no circumstance or proof to contradict the testimony of these witnesses. The rule, therefore, recently laid down by the N. Y. Court of Appeals applies :

" The mere fact that the plaintiff, who testified to important particulars, was interested, was unimportant, in view of the fact that there was no conflict in the evidence, or any thing or circumstance from which an inference against the fact testified to by him could be drawn."

Kelly vs. Burroughs, 102 N. Y., 93, 95.

The well settled equity rule, referred to in Gould vs. Gould, that an answer, under oath, responsive to the bill, must be overcome by strong and positive proof, implies necessarily that the fact of the witness being a party does not of itself discredit him. Long before parties were examined as witnesses in the cause, the effect of evidence was thus given to sworn answers in equity. This rule is still in force.

1 Daniel Ch. Pr., 843 (4 Ed.).
Beals vs. Railroad Co., 133 U. S., 290.
Seitz vs. Mitchell, 94 U. S., 580.
Clark's Executors vs. Van Reimsdyk, 9 Cranch, 153, 160.

NINTH.

Opinion of Court Below.

The Circuit Judge placed his decision on two grounds.

1. That the testimony of Brackenridge as to his purchase was unworthy of belief.

2. That the testimony of Brackenridge and Lytle as to the purchase by Lytle was unworthy of belief.

In a word, he undertook, without a particle of contradictory testimony, and without any evidence to impeach the testimony of either witness, to discredit them both absolutely. Such a course is not judicial. It is deciding a case on mere conjecture. Such a decision rests on no solid foundation, and ought to be reversed.

The depositions of Lytle and Brackenridge were taken in the first Lytle suit, May 16, 17, 18, 1887 (pp. 112, 113). No attempt has been made to contradict or impeach either of them, and they stand uncontradicted upon the record. If it had been possible to impeach

the character of either or contradict the facts sworn to by him, doubtless defendant would have done so.

In Howell vs. R. R., 94 U. S., 463, this Court held that the testimony of a party, uncontradicted and unimpeached, was sufficient to establish his good faith.

I. As to the testimony of Brackenridge. The ordinary man supposes that when a check is produced which is drawn on a bank, and which has the mark of having been paid by the bank, it proves a payment as satisfactorily as if fifty bags of gold containing a thousand dollars each had been produced and delivered. For one such payment that is made in this country in specie or in bills, there are a thousand that are made by check. This is considered to be the best voucher, better even than a receipt. The latter is only an admission of payment; the check when paid is the payment itself. But the counsel for Lytle did not stop here. He called Luria, vice-president of the bank upon which the check was drawn, who testified positively that the check was paid (pp. 142, 143). He identifies the stamp of the bank which was impressed upon it at the time. He identifies the endorsement of James J. Stewart and shows that it was deposited by him in the Hibernia Bank and came in due course of business through the Clearing House to the Bank of Louisiana upon which it was drawn and by which it was paid. The learned Circuit Judge misunderstood the testimony. For example, at page 147, he says: "It is singular that this check is produced by the bank upon which it was drawn." For this statement there is no warrant in the testimony. In point of fact the check was not produced by the bank, but by Brackenridge (p. 138), and was annexed to his deposition.

Yet it would not have been at all "singular," if the check had been produced by the bank. Checks lie for months, sometimes for years, in the bank upon which they are drawn.

II. The learned Judge says (p. 147): "No attempt has been made to show that it was paid by the San Antonio Bank." This also shows a complete failure to appreciate the testimony. Luria testifies (p. 143):

"The check was perfectly good, and the account of the San Antonio Bank, of which said Mr. Brackenridge was president, was good for the amount of said check at the time it was drawn, and said check was paid by the Louisiana National Bank."

The check being drawn by the San Antonio Bank could not possibly be paid by it in any other manner.

III. The learned Judge says: "Brackenridge does not testify explicitly that he paid the check, but says it was paid." How absurd it would have been for him to testify that he paid the check! He did not pay it. It was paid by the bank. He drew it, the check is signed by him as president, filled up in his handwriting. He would have stultified himself by saying that he himself paid it. No man pays his own check, and very few see their own checks paid.

IV. The learned Judge says (p. 148): "It is utterly improbable that a man of the intelligence and experience of Brackenridge would put $50,000 into a purchase of bonds of a town in a distant State without any inquiry as to their history or value." This assumption of the learned Judge is absolutely gratuitous. As matter of fact, any one familiar with financial transactions knows that men of wealth are constantly making purchases of property upon the recommendation of friends, without any other inquiry into its history or value. The truth is that few make any such inquiries. Nine-tenths of the bonds currently sold in New York are held by men who know nothing whatever about them, except what their brokers or business friends have said. Hundreds and thousands of bonds and certificates of stock

are sold every day in commercial exchanges of New York, Chicago, Boston and other leading cities, at as great a discount as that at which Brackenridge purchased these bonds, and without any inquiry or information beyond the recommendation of a trusted friend that the bonds are valuable and likely to yield a profit. To say that the natural inference from such a purchase is that it is not *bona fide*, is to overturn the doctrine of the courts of England and this country as to the negotiability of commercial paper. It is to substitute suspicion for certainty and guesswork for testimony.

Counsel for the Town, on cross-examination, did not even attempt to show that such purchases are unusual. In the absence of such attempt it would not have been proper to introduce affirmative evidence that they are usual. The Court takes judicial notice of the usual course of business.

King vs. Gallien, 109 U. S., 99.
Merchants' Bank vs. Hall, 83 N. Y., 338.

V. The criticisms of the learned Judge upon the testimony of Lytle and Brackenridge as to the purchase by Lytle are clearly unjust, and seem to indicate an entire failure to comprehend the testimony. This is fully stated under the first subdivision of this Point. We summarize it here. Lytle testifies that McDonald and he owned 40,000 acres of land on the Frio River in May, 1884; it had a river front of about fifteen miles, and was used for grazing purposes (p. 83). This land was worth four dollars an acre; that is to say, $160,000. Lytle owned half of it (p. 94). Brackenridge had no interest whatever in it (p. 104). He knew the ranch and knew what Lytle paid for it (p. 99). He knew the profits of the business on it, because he was banker for the owners (p. 110). There was *another* entirely distinct ranch, in Maverick County, in which Lytle, McDonald and Brackenridge were all interested. In this ranch they did not own the land, but only the cattle (p. 104). The agree-

ment between Brackenridge and Lytle was that Lytle would sell to Brackenridge a one-half interest in the Frio ranch, and would take in pay the Lansing bonds. Lytle valued a third interest in the Frio ranch at $50,000 in cash (pp. 94, 95, 108–112). At page 108 Lytle says, referring to the valuation of the Frio ranch at $150,000, "I would not have sold it for less than that." Shortly after the time of the agreement as to the sale of the one-third interest in the Frio ranch, a receipt was executed by Lytle and delivered to Brackenridge, stating that he had sold to him a one-half interest in the Frio ranch in consideration of the bonds (pp. 94, 95, 100). When this receipt was delivered to Brackenridge the bonds were delivered to Lytle. That is to say, the bonds were on deposit at the time at the San Antonio Bank. Brackenridge called in the assistant cashier, and told him to place those bonds to Lytle's credit subject to Lytle's order (p. 100). The same day the cashier delivered the bonds to Lytle ; and he deposited them in the San Antonio National Bank and directed the cashier to take care of them for him (pp. 101, 102, 126). Lytle did not convey by deed his interest in the land to Brackenridge ; but he and McDonald did convey it to a company afterwards formed, called the San Antonio Ranch Company ; and stock of this company to the extent of Brackenridge's interest was delivered to him for it. His answer (at p. 120) as to the organization of the company is fully explained on page 126. The Circuit Judge criticises this account and says: "This scrip is all that Brackenridge has to produce for the ranch interest for which he claims to have exchanged the bonds." What more could he be expected to produce ? Nothing is more common in this country than the formation of stock companies, the conveyance to them of property, and the issuing of stock to represent the property. The man who holds stock holds all the evidence of his interest in the company that the law provides, or that is possible for him to have.

VI. The Judge attempts to argue from the testimony that Brackenridge really owned the interest in this ranch, before the agreement between him and Lytle as to these bonds. This is an absolute misapprehension of the testimony. Lytle and Brackenridge both swore that Brackenridge had no interest whatever in the Frio ranch, before the agreement. They did have a joint interest in *another* ranch in *another* county. This, like many other ranches in the years before 1885, was simply a concern owning numerous cattle and pasturing them on public lands which did not belong to the owners of the cattle. Such companies were common, and made great profits. As public lands began to be settled, as the policy of the Government was developed to throw them open to settlers and prevent the monopolizing of them by cattle owners, such ranches became impracticable, and the profits of ranch business gradually diminished. All this is a part of the public history of the country, and occurred after the year 1884. But men of prudence at that time saw that it was desirable to own land on which their cattle could be pastured; and it was perfectly natural, therefore, that Brackenridge, who owned cattle and a going concern engaged in the cattle business, should have desired to acquire an interest in so large a tract of land as this Frio ranch for fifteen miles of water front. This water front made it especially desirable for grazing, because it secured the water necessary to the cattle. By means of the transaction between Lytle and Brackenridge, the latter acquired an interest in the Frio ranch in addition to his interest in the Maverick cattle. At page 150 the learned Judge assumes that the $440,000 stock issued was all given for the $180,000 worth of Maverick cattle in which Brackenridge had always had a third interest. This is an absolute mistake. Brackenridge was allowed only $60,000 stock on this account, and he was allowed $85,000 stock for his share in the Frio ranch and cattle on that (p. 121).

TENTH.

Willful Ignorance not Bad Faith.

The learned Circuit Judge does not dispute the propositions stated in the Fifth and Sixth Points, but holds that "willful ignorance" necessarily involves bad faith. No doubt some of the authorities do express this limitation. When, however, we look at the facts of the various cases in which this question has been considered, it is evident that, whatever the courts meant by "willful ignorance," they would not apply those words to the circumstances under which Lytle bought these bonds.

In Goetz vs. Bank of Kansas City, 119 U. S., 551, the Court say (p. 560):

"The bad faith in the taker of negotiable paper which will defeat a recovery by him must be something more than a failure to inquire into the consideration upon which it is made or accepted, because of rumors or general reputation as to the bad character of the maker or drawer."

In Seybel vs. National Currency Bank, 54 N. Y., 288, at the time the bonds in question were purchased, the purchaser actually had a notice posted in his office warning him not to buy those bonds. But it was held that his omission to examine that notice or to compare with the numbers of the notice the numbers of the bonds bought did not deprive him of the character of a *bona fide* purchaser, and that he was not bound to examine such notices.

In Raphael vs. The Bank of England, 17 C. B., 161; s. c., 33 Eng. L. and Eq., 278, the broker, who bought a stolen £500 note of the Bank of England, had heard of the robbery, had a notice in his office that this particular note had been stolen, was in the habit of examining such notices before buying large notes, and

omitted to do so in this instance. This was held not to be willful ignorance.

In Goodman vs. Simonds, 20 How., 361, the party who pledged the bill of exchange in question was known to be in embarrassed circumstances. It did not appear that the buyer made any inquiries, and the bill of exchange had been drawn in blank and was filled up by the seller. The *bona fides* of the transfer was sustained.

In Goodman vs. Harvey, 4 Ad. & Ell., 870, it appeared that the drawee of the bill had refused to accept it and that notice of this was evident on the face of the bill, yet the Queen's Bench held that the omission to notice this was not proof of fraud.

In Welsh vs. Sage, 47 N. Y., 143, it appeared that scrip certificates were ordinarily attached to the bonds which were the subject of the sale. These had been stolen and were sold without the scrip certificates. It was claimed that the fact that these certificates were not attached to the bonds when they were offered for sale ought to have led to inquiry, and that the omission to inquire showed willful ignorance. The jury disagreed, and the Court thereupon directed a verdict for the plaintiff. This direction was sustained by the Court of Appeals.

In Mitchell vs. Catchings, 23 Fed. Rep., 710, the law was thus laid down by Judge BREWER:

"The purchaser suspected that the note was given for one of these gambling contracts. He knew the parties from whom he purchased, and that they were engaged in that kind of business; and so he says he was not blind, but suspected the nature of the transaction. Still he knew nothing about it. He bought it in the regular course of business at his bank, and paid his money for it. I have a strong feeling in reference to these transactions (purely gambling transactions—that is the long and short of it), and it is a sore temptation to ignore the law laid down by the Supreme Court and say that the man who buys under such circumstances does not buy as a *bona fide* purchaser. But the Su-

preme Court have held in several cases—and, of course, that must here be taken as settled law—that mere suspicions or negligence do not invalidate the purchase or make the purchaser not a *bona fide* purchaser. 'There must be [and that is the language of the Court] *mala fides;*' and it could hardly be said there was *mala fides* in this case. The note on the face was all right. The plaintiff bought it in the regular course of business and paid his money for it, paying full value; and, while from the knowledge that he possessed of the business in which the payees were engaged he must have suspected and did suspect the origin of the note, yet he did not know it. I am, therefore, reluctantly compelled to say that I cannot hold that he was guilty of *mala fides* in purchasing the paper; and that, being a *bona fide* purchaser, he is entitled to recover."

In these, as in like cases, both in English and American Courts, the contention for the defendant was that there was notice sufficient to put on inquiry, and that this was equivalent to notice of the facts. But the Courts have distinctly refused to approve this contention, as already shown under the Fifth Point. It is obvious, therefore, that an omission to inquire is not willful ignorance within the meaning of the same cases. They distinctly hold it is not. Apply the doctrine of these cases, as connected with their respective facts, to the present case. Brackenridge was a banker, and a buyer and seller of various securities. There was nothing surprising, therefore, in the fact that he had these bonds for sale. He was also an investor in Texas property, and had made one such investment with Lytle. He had lent Lytle money, and was his regular banker.

There was nothing then in the nature of the transaction to excite the slightest suspicion. If there had been a notice signed by the Supervisor of the Town of Lansing posted up in Brackenridge's office warning parties against buying the bonds, the case would have been like the Seybel and Raphael cases. If Brackenridge had been in embarrassed circumstances the case

would have been like Goodman vs. Simonds. If Brackenridge had not been a regular dealer in securities the case would have been like Murray vs. Lardner, 2 Wall., 110.

None of the facts which were urged in those cases as showing bad faith existed in the present case. In every particular the facts are more favorable to the *bona fides* of the transaction than in those cases. Yet in every one of them the Courts distinctly held that the facts proved did not show that the purchaser of the securities was not a *bona fide* purchaser. How is it possible then for this Court, consistently with these decisions, to decide against the good faith of Lytle?

ELEVENTH.

Consideration Paid Before Notice.

The point was made below that Lytle was not a purchaser in good faith for value, because he did not pay the entire consideration for the bonds before he had notice of the town's defense. This point is not well taken, for the following reasons:

I. The entire transaction was consummated in the San Antonio Bank at the time the bonds were delivered to Lytle. It is evident from the testimony referred to under the Seventh Point that the actual transaction was not so much a sale of an interest in real estate in exchange for certain town bonds as it was the admission of Brackenridge into an interest in the business of raising and selling cattle, which before that time had been carried on by Lytle and McDaniel.

Lytle was general manager, received all the money

and paid money, and kept a general supervision over the business (Record, p. 105).

McDaniel was treasurer and had charge of the business at home under Lytle's supervision, and Brackenridge was director *(Ibid.)*. Brackenridge says in reference to it (p. 115): "I intended to purchase not only the land but the cattle; the ranch embraced not only land. The expression means land and cattle." At page 115 he says: "It was turned into our cattle interest—to the San Antonio Ranch Company, and has always been held from the time of the delivery of that paper to the present time as part of the San Antonio Ranch for which I received stock." At page 12 he says: "We wished to issue all the stock, and we put in the betterments of our ranch, land, and everything and capitalized it." It is shown by a comparison between the testimony of Lytle as to the number of cattle that were on the ranch at the time of the sale to Brackenridge in May, 1884, which he fixes at 2,500 (p. 93), and the testimony of Brackenridge as to the number that were on it at the time the certificates of stock were issued, which he fixes at 22,000 (p. 122), that the three partners had put on the ranch 19,500 head of cattle between May, 1884, and January, 1885. These cattle were worth in January, 1885, $300,000 (p. 122). There is no contradiction of any of this testimony; and it must therefore be taken as a fact that from the time of the delivery of Exhibit E, which is dated May 24, 1884, (p. 140), Brackenridge was the owner of a one-third interest in the entire ranch business carried on on the Frio ranch.

He testifies (p. 115):

Q. What was done after that, if anything, to vest the interest in that ranch in you beside the delivery of this paper? A. It was turned into our cattle interest—to the San Antonio Ranch Co.—and has always been held from the time of the delivery of that paper to the present time as part of the San Antonio ranch for which I received stock.

This being so, it is plain that the transaction was completed at least as early as May 24, 1884, and that when the corporation was formed, the stock was issued to Brackenridge, not in payment for the bonds, but in payment for his existing interest in the entire property, consisting not only of that which was transferred to him May 24, 1884, but that which was subsequently acquired by the firm. Indeed the parties understood the bargain as closed at the time of the previous conversation at Brackenridge's house. Lytle says (p. 99): "The trade was consummated then."

The proposition may be thus tested: Suppose McDaniel, the treasurer, had failed to pay for a herd of cattle that had been bought for this Frio ranch after May 24, 1884, and before January, 1885. Would not the three partners have been liable for the price of these cattle? On the other hand, is it not equally clear that if a profit had been made in the business of the ranch between those dates, Brackenridge would have been entitled to a third of it? A community in profit and loss is the true test of a partnership; and, judged by this test, it is plain that the effect of the transaction of the 24th of May was to admit Brackenridge into the firm which was carrying on the business of a ranch on the Frio River. The legal title to the real estate remained naturally and properly in Lytle and McDaniel. But the law is well settled that they held it as trustees for the benefit of the partnership, and that in equity the land was to be treated as the personal property of the firm.

"Real property, owned by a partnership and purchased with partnership funds is, for the purpose of settling the debts of the partnership and distributing its effects treated in equity as personal property."
Allen vs. Withrow, 110 U. S., 119, 130.

Real estate held as partnership property belongs to the firm. The surviving partner can sell it and con-

vey a good equitable title, and compel the heirs or devisees of the deceased partner to convey the legal title.

Shanks vs. Klein, 104 U. S., 18.

II. The cases cited by the Town on the point referred to are all cases of conveyance of real estate. In most of them the purchase was from a fraudulent vendee or trustee. But the law as to the evidence necessary to support the claim that the holder in a *bona fide* purchase for value is much less exacting in the case of negotiable securities than it is in the case of real estate. The decisions on this subject which are referred to under the Fifth, Sixth and Ninth Points show conclusively that this is the case. The very authority cited by the counsel for the Town (Perry on Trusts, Sec. 221), states at Section 223 that constructive notice is sufficient to charge the purchaser of real estate with knowledge of the defect in the title he has acquired, or, as sometimes stated, "Means of knowledge are the equivalent of knowledge."

It is clear, however, that this is not the rule in reference to negotiable paper, and it is equally well settled in the case of a purchase of negotiable paper that the purchaser can recover the full amount of the paper purchased, although the amount he pays for it is very much less than the par value of the security.

This was distinctly held in

Railroad Co. vs. Cowdrey, 11 Wall., 495.
Park Bank vs. Watson, 42 N. Y., 490.
Grand Rapids R. R. Co. vs. Sanders, 17 Hun, 552.

So, a transfer of negotiable paper for a preëxistent debt is sufficient to constitute the transferee a holder for value. As to assignments of mortgages, the rule is otherwise. The reasons for this are clearly stated in

People's Savings Bank vs. Bates, 120 U. S., 556, 565.

III. There is no evidence in the case that Lytle had notice that there was a defense to the bonds, or what the defense was at the time the stock was issued. The testimony on this subject was given by Mr. Lytle himself (pp. 103 and 104). He says that in the summer or fall of 1884, he received a letter from his attorneys informing him of some difficulty; that he went to Mr. Brackenridge after he received this letter and talked to him about it, and that Brackenridge told him he had himself a suit pending about some of the coupons, and he says he had no other conversation with Brackenridge in regard to the defense of the bonds that amounted to any more than that.

At a later period, and before Lytle's examination in May, 1887, he learned more in regard to the defense to the bonds, and gives his impression that Brackenridge finally explained the whole matter to him (p. 106). But it is evident from a comparison of the testimony that this was subsequent to the commencement of Lytle's suit against the town, and after the delivery of the stock. The most, therefore, that can be claimed by the town is that Lytle, at the time the stock was delivered, had some suspicion in regard to the title to the bonds. But this, as distinctly shown under the Fifth, Sixth and Seventh Points, is not sufficient to impeach his title. There must be knowledge of facts constituting a defense, and not merely a suspicion of them.

TWELFTH.

The Brackenridge Title.

The testimony in respect to the purchase by Lytle is so clear that it is believed the Court will hardly think it necessary to consider whether Brackenridge was a purchaser in good faith and for value.

But if the Court consider this question, we submit that the evidence is clear that he was. On the question of value the original check which Brackenridge gave to Stewart is a most important piece of evidence. Its genuineness is manifest on inspection. There can be no doubt that Brackenridge did actually pay to Stewart for these bonds on the 27th of February, 1882, $50,000. The genuineness of Stewart's endorsement is established by the testimony of Luria, the vice-president of the Louisiana National Bank (p. 143).

The observations made under the Sixth Point as to the question of adequacy of consideration are applicable to this Brackenridge title. The only differences are two:

1. Brackenridge paid cash for the bonds, whereas Lytle paid cash value. This would seem to be unimportant, as the testimony is positive that the valuation of $50,000 was a cash valuation (p. 111).
2. Brackenridge received with the bonds overdue coupons (pp. 124, 125).

I. The discrepancy between the par value of the bonds and coupons and the price paid for them is unimportant.

Brackenridge had been a dealer in many securities, had bought bonds of the State of Texas at 75 that

he could afterward sell for 140, had bought San Antonio bonds at a discount and sold them at a premium (p. 119, marg. p. 186).

II. Much stress was laid in the Court below on the fact that at the time Brackenridge bought the bonds there were some unpaid coupons. It appears from Brackenridge's testimony that these coupons had been detached and were in a separate package, which he did not open at the time (p. 123). He could not state definitely whether his attention, at the time of the purchase, was drawn to the fact that some of the coupons were unpaid (p. 130). He bought the bonds and coupons "in a lump under the advice of Stillman" (p. 130).

His testimony as to the interview with Stewart is at page 131:

"I went to Mr. Stewart to purchase those bonds. I stated my business, the price I understood they were offered at, and asked him for them. My recollection of the substance of our interview is that I told him I understood he had $75,000 of Lansing bonds which I could get at $50,000 and I got them. I have no recollection of anything being said about coupons."

"The non-payment of an instalment of interest when due could not affect the negotiability of the bonds or of the subsequent coupons until their maturity, a purchaser for value, without notice of their invalidity as between antecedent parties, would take them discharged from all informities."

Cromwell vs. County of Sac, 96 U. S., 51, 57.

III. Another argument adduced was that Stewart was a stranger to Brackenridge, and it was improbable that he should buy from a stranger. This argument has no force. It is a matter of constant occurrence that persons who have never met before engage in business transactions, where there is an introduction from a responsible source. In this case, the bonds were recommended to Brackenridge by Mr. Stillman, or some

friend of his (p. 127). Brackenridge knew Stillman well (p. 123), and knew Stewart by reputation (p. 132).

The same point was made and overruled in

Murray vs. Lardner, 2 Wall., 110.

IV. The defendant argued that there was no proof that the check given by Brackenridge was paid out of his funds. We submit that the deposition of Luria shows distinctly that the check was paid out of the funds of the San Antonio National Bank, of which Brackenridge was president. In effect, therefore, it was the same as if he had drawn a check on his own bank. As between him and his bank the payment by the Louisiana Bank was an application by Brackenridge of funds for which he was personally responsible. Apart from this positive testimony the Court will presume that the check was paid out of the funds of the drawer.

Hortsman vs. Henshaw, 11 How. (U. S.), 177, 183.

In that case it was held that the presumption of law is that the acceptor of a bill has funds of the drawer in his hands, and accepts against them, and he cannot deny this in a suit by the holder.

So, in Raborg vs. Peyton, 2 Wheat., 385, the Court say: "*Prima facie*, every acceptance affords a presumption of funds of the drawer in the hand of the drawee, and is of itself an express appropriation of those funds for the use of the holder."

It is obvious that if this be the presumption, where there is only an acceptance, it must *a fortiori* be the rule where there is an actual payment by the drawee.

V. The counsel for the town contended that Brackenridge knew that these bonds of the Town of Lansing had been held invalid by the State Courts. But this is not his testimony. What he actually did say was this: The fact that the bonds were

bought at such a large discount did not excite his curiosity and suspicion, for he bought the bonds of the State of Texas at the same discount (p. 128).

He further said that he knew that county and town bonds had been in some cases repudiated by the municipalities issuing them, and that the local State Courts had pronounced such bonds void, but that the Federal Courts pronounced the same bonds good (p. 128). At p. 117 he says: "I had not the slightest idea that they were invalid. I believed that they were like some San Antonio bonds that were held void in the State Courts, but when sued for in the Federal Courts they were declared legal and valid."

We submit that the view to be taken of this last testimony depends entirely upon the standpoint. The decisions of some State Court have undoubtedly allowed towns to take advantage of irregularities and technicalities attendant upon the issue of their bonds; just as in this case, a town which has received the full benefit of the bonds is allowed by the State Court to keep the benefit and repudiate the obligation, upon paltry technicalites. On the other hand, this Court has held that towns shall not be allowed to repudiate their honest obligations because of some trifling defect in the manner of their issue. This difference in the rulings of the two Courts is perfectly well known to dealers in securities and was confessedly known to Mr. Brackenridge (p. 128). In this Court, certainly, we are bound to believe that the latter line of decisions is just. Being just, it must be just to take advantage of it. It is, therefore, no imputation upon the good faith of a purchaser that he is aware of this distinction, and gives more credit to the security he is dealing in, by reason of the distinction. Indeed, if it were not for the ruling of this Court, no one would buy town bonds at all.

Brackenridge was asked particularly on this subject, and he testified (p. 128): "I had no doubt about the

justice and honesty of the bonds, and that I could recover in the Federal Courts."

THIRTEENTH.

The second defense pleaded to the complaint in the Lansing suit is supported by the evidence and sufficient in law (p. 16). The bonds were issued by officers of the Town. The railroad company, in consideration thereof, agreed to expend their proceeds in building a railroad through the town and gave its bond to that effect (p. 84). It spent the money upon the railroad, which was built and has been running ever since (pp. 82, 85). The town has thus received the actual consideration it expected, and has constantly, since the bonds were issued, received the advantage thereof. The annual taxes upon the railroad in the Town must have been equal to the interest on the bonds. Yet, the Town has never offered to restore to the holders of the bonds the amount expended upon the faith of them. A party cannot maintain a suit to rescind even a fraudulent contract, until he has offered to return what he has received upon the faith of it.

2 Kent Comm., 470, n. f.
Cobb vs. Hatfield, 46 N. Y., 533.
Schiffer vs. Dietz, 83 N. Y., 300, 308.
Graham vs. Meyer, 99 N. Y., 611.
Urquhart vs. Macpherson, L. R., 3 App. Cas., P. C., 831.

The same rule applies in case of mistake.

Grymes vs. Sanders, 93 U. S., 55, 62.

Whatever rule might apply to an action at law upon the bonds, this rule certainly applies to the present suit in equity to annul and cancel them. Even towns, when seeking equity, must do equity.

FOURTEENTH.

The whole case being now before the Court upon the cross-bill filed by Lytle, and the answer and replication thereto, the Court should proceed to determine finally the whole controversy between the parties.

I. A cross-bill was the proper method of proceeding.

Chapin vs. Walker, 6 Fed. Rep., 749.
Brand vs. Gilchrist, 18 *Ibid.*, 465.

II. It is immaterial that the bonds and many of the coupons are not yet due. Some of the coupons have become due since the commencement of the suit. But as to the whole matter in controversy the Court should determine:

1. That the bonds are valid.

2. That the Town of Lansing should pay to Lytle the amount of the coupons held by him and now due, with principal and interest, and the coupons hereafter to become due, as they respectively shall become payable. This is in accordance with the well-settled rule of equity that, where the Court has once acquired jurisdiction it will retain it, so as to do complete justice between the parties and avoid a multiplicity of suits.

Ward vs. Todd, 103 U. S., 327.
Ober vs. Gallagher, 93 U. S., 199.
Tayloe vs. Merchants' Ins. Co., 9 Howard U. S., 390.

In the last of these cases the bill was filed for the specific performance of an agreement to insure. The Court ordered specific performance, and then decreed that the defendant should pay the amount insured under the policy. In the former two cases a bill was filed to foreclose a lien or mortgage. The amount of debt was payable in installments only, one of which was due

at the time of the filing of the bill, but the Court retained the bill and decreed payment of the subsequent installments.

FIFTEENTH.

A decree should, therefore, be made, reversing the decree appealed from and remanding the cause, with instructions to the Circuit Court to render a decree upon the cross-bill in favor of John T. Lytle, to the effect stated in the foregoing assignment of errors, with costs.

SHEARMAN & STERLING,
Solicitors for Appellant.

THOMAS G. SHEARMAN,
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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM 1892.

TERM No 79.

JOHN T. LYTLE,
Appellant.
vs.
THE TOWN OF LANSING.
} In Equity.

JOHN T. LYTLE,
vs.
THE TOWN OF LANSING.
} Cross-Bill.

Brief for the Town of Lansing,

APPELLEE.

H. V. HOWLAND,
Counsel for Appellee.

RECORD, CASE NO. 13,621.

SUPREME COURT OF THE UNITED STATES.

October Term, 1892.

Term No. 79.

JOHN T. LYTLE, *Appellant*,
vs.
THE TOWN OF LANSING. } In Equity.

JOHN T. LYTLE,
vs.
THE TOWN OF LANSING. } Cross-Bill.

STATEMENT AND BRIEF FOR THE TOWN OF LANSING—Appellee.

This is an appeal from a decree of the Circuit Court of the United States. (Page 38 & 39) Made and entered on the 25th day of April, 1891.

This action was commenced in the Supreme Court of the *State of New York, in Equity*, in the month of May, 1887, by the Town of Lansing, one of the towns of Tompkins county, N. Y., against John T. Lytle, a citizen and resident of the state of Texas, for the relief prayed for in the complaint, (Page 9) viz.: for a judgment and decree adjudging and declaring, 75 $1,000 bonds and coupons thereto annexed, purporting to have been made by the Town of Lansing, bearing date the *1st day of October*, 1871, in aid of the Cayuga Lake Railroad Company, null and void, in the hands of said defendant,

and, to compel the defendant to deliver up said bonds and coupons thereto attached, to the Clerk of said Court, or to such other person as the Court might designate, to be cancelled and destroyed; and also, restraining the defendant, his attorneys and agents from collecting or transferring said bonds or coupons pending said action, and for final decree, to that effect. (Page 80).

On the 16th of January, 1888, said Lytle removed said action from the State Court to the United States Court, and on January 21st, 1888, filed his answer to the complaint; on the 20th of March, 1888, the plaintiff filed a replication thereto. (Page 1).

And, on the 9th day of April, 1888, said Lytle filed a cross bill against the Town of Lansing; on the 28th day of April, 1888, the Town of Lansing filed an answer thereto; and on the 7th day of May, 1888, a replication to said answer was filed on behalf of said Lytle.

The testimony was thereafter taken on behalf of the respective parties; and, on the 27th day of November, 1888, the cause was brought to a hearing, and argued by the Council of the parties, before the Hon. William J. Wallace, Circuit Judge, at a Term of said U. S. Circuit Court, held by him in Syracuse, N. Y. (Page 1).

On the 19th of March, 1889, the Court made and filed its decision, and the final decree was made and signed by the Court, and entered April 25th, 1889, granting to the plaintiff, substantially the relief demanded in its complaint. (The decree is found at pages 38-40, the opinion of the Circuit Judge is on pages 144-152).

1. On the trial in the Court below, it was contended, and still is claimed on this appeal, on the part of the Town

of Lansing, that the entire issue of seventy-five $1000 municipal bonds purporting to be issued by said town, "to subscribe to stock of the Cayuga Lake Railroad Company," together with the semi-annual interest coupons attached, bearing date October 1st, 1871, were null and void, *and made without authority and fraudulently issued, as against the town.*

And this point was regarded and held to be established and settled by the judgment of the Supreme Court of the State of New York, on the hearing of the proceedings on the writ of certiorari brought to review the judgment and proceedings of the County Judge of Tompkins county, which the Supreme Court reversed, set aside and held for naught on the 1st Tuesday of May, 1872.

Pages 63 *to* 72 *inclusive.*

The People ex. rel. Van Valkenburgh, 63 *Barbours, R.* 105.

2. That upon the town making the proof by said judgment of the Supreme Court reversing, the proceedings of the County Judge purporting to authorize the making and negotiating said bonds, and holding the same for naught; that the burden of proof then rested upon the defendant Lytle to show, that he or some prior owner and holder of the bonds, to whose title he had succeeded, had purchased said bonds *bona fide* and without notice or knowledge of their defects and for value; that unless he could establish such facts, he could not recover upon said instruments, nor successfully defend this action, and the town would be entitled to the relief demanded in its complaint.

3. That the proofs in the case, only tended to show that the following parties or persons had ever pretended to own, or hold said bonds, since they were issued, viz.: *The Cayuga Lake Railroad Company; Leonard, Sheldon & Foster, bankers in New York City; Elliott, Collins & Co., bankers in Philadelphia; John J. Stewart of New Orleans; Geo. W. Brackenridge of San Antonio, Texas; John T. Lytle, of Medina Co., Texas.*

And that not one of those parties were shown to have been *bona fide* owners, for value, and without knowledge of the defects or alleged defects of said instruments; that such being the facts proven, the plaintiff, *The Town of Lansing, was entitled to the relief prayed for.*

4. That the pretended purchase of the bonds and coupons, by Lytle, of Brackenridge, was in May, 1884; that the only consideration for the same, was the promise to convey to Brackenridge one-third of the Frio ranch, being 40,000 acres of land on the Frio river in Texas, owned by Lytle and McDaniels. That the said land was never conveyed to Brackenridge, but the whole of it was conveyed by *Lytle and McDaniels* to Frio Ranch Company, *after its incorporation on the 28th day of January*, 1885; that if Lytle, *before conveying said land*, in payment, or as intended for payment of the purchase consideration for said bonds, *was informed or had knowledge of the difficulties, defects or alleged defences to said bonds, by the Town of Lansing, before he conveyed said real estate*, or paid for said bonds; then and in that case, he was not a *bona fide* purchaser for value, and not entitled to recover in these actions; but that the town was entitled to the relief prayed for in its complaint. And the proofs show that he had such knowledge sufficient to bring him within the above rule.

5. That none of the corporations, firms or persons pretending to be owners or holders of said bonds, since their issue, including the defendant, Lytle, were shown to be, or to have been, *bona fide* owners and holders for value and without knowledge of their defects, at the time of their pretended purchase, or title, to the same.

6. That the petitions before the County Judge of Tompkins county were illegal and invalid and did not contain facts necessary to give him jurisdiction of the matter. And the proofs before him were insufficient to authorize or empower him to pronounce said judgment, for bonding the town. And he had no jurisdiction or power to appoint said Knettles, Hall and Clark, Commissioners to make, execute and deliver said bonds and coupons, or to sell or transfer the same for stock of said railroad, or otherwise. And that their said acts in making and selling the same as they did, were fraudulent and void, as against said town and its tax payers, and of no force or effect in law.

7. These and other questions appearing in the decree and record, were involved on the trial below, and passed upon as stated in the decree and in the record, in favor of the Town of Lansing and against the defendant and appellant, Lytle.

BRIEF.

POINT FIRST.

1. In the year 1870, the Town of Lansing, Tompkins county, N. Y., undertook to make and issue its municipal bonds for the amount of $75,000 payable in 30 years, with semi annual interest, in aid of THE CAYUGA LAKE RAILROAD COMPANY.

The petition for bonding was made in pursuance of the statutes of the state of New York, entitled "An Act to Amend an Act," entitled "An Act to Authorize the Formation of Railroad Corporations, and to Regulate the Same," passed April 20th, 1850, and a further amendment passed May 18th, 1869, to permit municipal corporations, *to aid in the construction of railroads.*

Chap. 907, Sec. 1, Laws of 1869, reads as follows:

"Whenever a majority of the tax-payers of any "municipal corporation in this state, whose "names appear upon the last preceding tax "list, or assessment roll of said corporation, as "owning or representing a majority of the "taxable property in the corporate limits of "such corporation, shall make application to "the County Judge of the county in which "said corporation is situated, by petition veri- "fied by one of the petitioners, setting forth "that they are such a majority of the tax- "payers, and represent such a majority of "taxable property, and that they desire that "such municipal corporation shall create and "issue its bonds to an amount named in such "petition (but not to exceed twenty per cent. "of the said whole amount of taxable property, "as shown by said tax list and assessment "roll) and invest the same or the proceeds "thereof in the stock or bonds (as said petition "may direct) of such railroad company in this "state as may be named in said petition, it "shall be the duty of said County Judge to "order that a notice shall be forthwith pub-

"lished in some newspaper, in such county, or "if there be no newspaper published in said "county, then in some newspaper printed in an "adjoining county, directed to whom it may con- "cern, setting forth that, on a day therein named, "which shall not be less than ten days nor "more than thirty days from the date of said "publication, he will proceed to take proof of "the facts set forth in said petition as to the "number of said tax payers joining in said "petition, and as to the amount of taxable "property represented by them. And any "solvent, moneyed, manufacturing or other "corporation or company, formed under the "laws of this state, and being assessed on real "or personal property therein, shall have all "the rights and privileges under this act so "far as property representation is concerned, "as other tax payers. And the board of direct- "ors or trustees of any such corporation or "company may apply to the County Judge by "petition, in the same manner as herein pro- "vided for other tax payers. The words "'municipal corporation,' when used in this "act, shall be construed to mean any city, "town or incorporated village in this state."

(*See petitions of tax-payers, pages* 45 *to* 57), *Chap.* 907, *Sec.* 1, *Sess. Laws of N. Y.* 1869.

2. Upon the presentation of said petition to the *Hon. Mills Van Valkenburgh*, then County Judge of Tompkins county, *on the* 10*th of December*, 1870, he caused due notice to be duly published, that, on the 24th of Decem-

ber, 1870, at 10 o'clock in the forenoon, at his office in Ithaca, in said county, he would proceed to take proof of the allegations in said petitions as required by said act. That after taking said proofs, and, on the 20th day of March, 1871, the said County Judge on motion of counsel for petitioners did among other things, adjudge and determine that said petition was duly signed and executed by petitioners whose names appear upon the same as petitioners thereto, and that said petitioners are tax payers of the Town of Lansing as appears by the last preceding tax list or assessment roll of said town, and that they constitute and represent a majority of the said tax payers of Lansing, as shown by the last preceding tax list or assessment roll of said town. And that said petitioners represent a majority of the taxable property upon said last preceding tax list or assessment roll.

And said County Judge did further adjudge and determine that the sum of $75,000 mentioned in said petition does not exceed twenty per cent. of the whole taxable property of said Town of Lansing, as shown by the last preceding tax list or assessment roll, of said town, and that all the requirements of law respecting the creation and issuing of the said town bonds of Lansing to the amount of $75,000 and for investment of the same or the proceeds thereof in the stock or bonds, or both, of "The Cayuga Lake Railroad Company," have been fully complied with, by said petitioners. And further determined and adjudged that it was expedient and proper that three persons who are freeholders, residents, and tax-payers in the said corporate limits of said town of Lansing be appointed and commissioned as commissioners for the purpose specified and contemplated in said peti-

tion. And by his said judgment, the said County Judge did appoint and commission John T. Knettles, Darius Hall and Alonzo Clark, freeholders and residents and tax-payers within the said town of Lansing, as commissioners, whose duty it shall be with all convenient dispatch, to execute the bonds of said Town of Lansing to the amount and for the purposes set forth in said decision and to further discharge all such further and other duties as shall be required of them as such commissioners.

Mills Van Valkenburgh, Tompkins County Judge
(*See pages* 61–63).

3. On the 27th of March, 1871, *a writ of certiorari* was sued out of the Supreme Court, by proper parties, to review said proceedings and judgment of the said County Judge.
(*Page* 66 and 67).

Due return was made to said writ, by said County Judge, and on the 1st day of September, 1871, the same was brought to argument at a General Term of the Supreme Court, held in Albany, and thereafter at a subsequent term held in May, 1872, the said General Term of the said Court decided, and *ordered and adjudged that the judgment, determination and proceedings of said County Judge in the matters set forth in said writ* and return, to wit: *all the proceedings in relation to the issuing of bonds of the Town of Lansing in Tompkins county, in aid of the said Cayuga Lake Railroad Company, be and hereby are, in all things reversed, annulled, and altogether held for naught;* and that the plaintiff recover $235.00 costs and disbursements; which said decision and judgment and order of reversal was on the 21st day of May, 1872, duly

entered and filed in the clerk's office of Tompkins county, *where the same still remains unreversed and in full force.*

(*Pages* 70–72, 63 *Barb. R.* 105).

The Supreme Court held that the proceedings and judgment were void for the reasons following:

1. That the Cayuga Lake Railroad Company was not a **legal corporation** and that the Court had no jurisdiction to authorize the town to bond in aid of a corporation that had no legal existence.

That the articles of association failed to state the **name of each county through or into which the road was intended to be made.**

2. That no valid charter was produced before said County Judge.

3. That the petition did not direct whether it was **in stock or in bonds, that the money to be raised should be invested.**

4. That it is not shown that a majority of the taxpayers had signed the petition.

(*The People vs. Van Valkenburgh*, 63*rd Barb. R.* 105).

4. It was clearly proved on the trial below, that the railroad company by its attorneys and employes, being aware and having full knowledge of said defects in the said proceedings and judgment, **secretly connived with said commissioners, and by falsehoods and fraud, and compulsion and threats made to them, and by giving to the said commissioners a bond of indemnity against their own wrongful acts,**

notwithstanding that they were all aware of the pendency of said proceedings to review said judgment and proceedings, induced *Knettles, Hall and Clark*, to execute and deliver the whole batch of $75,000 of bonds with interest coupons attached, to the said railroad company, all bearing date October 1st, 1871, and payable thirty years from the 1st day of January, 1872, with interest payable semi-annually; for which they received the certificate for the equivalent amount of said railroad stock, for which nothing has ever been realized, and said corporation having long ago failed.

(*Page* 85). *See bond of Indemnity.* (*Page* 83).

Testimony of Alonzo Clark, (*pages* 75–76).

Testimony of J. T. Knettles, (*page* 90).

See evidence of Darius Hall, (*page* 86–89).

See evidence of Talmadge Delafield,(*page* 81–85).

5. These bonds were claimed to be owned and held by the railroad company, from Oct., 1871, until they were finally sold *by the order and direction of said railroad company through Talmadge Delafield, its treasurer, in February*, 1873, for 30 cents on a dollar or thereabouts. In the meantime they were pledged as collateral security by the said railroad company, to *Leonard, Sheldon & Foster*, a banking firm in New York city, as security for a loan of $50,000 to said railroad company, during which time, said bankers had power and instruction from the company to sell the bonds. Afterwards the said loan was transferred, to *Elliott, Collins & Company*, bankers of Philadelphia; said latter firm took the loan from the hands of the former firm, and the said bonds were passed

into the hands of the said Philadelphia Company to secure the same amount, which was thus continued, as the same loan with the same collaterals; the latter company having also, *authority from the railroad company to sell the said bonds for said railroad company, at the price of from 70 to 80 cents on a dollar.* Afterwards and on or about February, 1873, the said Elliott, Collins & Company, sold said bonds and coupons for $54,337.50 and deducted the amount of the said railroad company's loan, amounting then to $49,591.67, leaving a *balance to the credit* of the said railroad company of $4,745.83.

(*See evidence of Delafield, page* 81–85.)

To whom the said bonds were sold, *in behalf of the said railroad company*, by said Elliott, Collins & Company, does not appear. The next account we have of who the pretended owner of said bonds was, is what is revealed in the judgment roll in an action wherein John J Stewart, *was plaintiff, against the Town of Lansing*, wherein Stewart claimed to recover for certain interest coupons, which became due July 1st, 1872 to July 1st, 1876, both inclusive, (except the coupons due July 1st, 1873), which action was tried before the Court, and a Jury, at a term of the United States Circuit on the 19th day of December, 1878, and a verdict rendered upon the merits, *for the defendant, the Town of Lansing, against the plaintiff therein*, and afterwards said *John J. Stewart* sued out a writ of error to review said judgment in the U. S Supreme Court, and it appears by the mandate of said Supreme Court that the said judgment was there *affirmed on the 30th of June*, 1882.

(*See page* 90 *and* 91).

(*Stewart vs. Lansing*, 104 *U. S. R.* 505)

6. The uncontradicted evidence is to the effect that the $75,000 in bonds, purporting to have been made, and bearing date October 1st, 1871, and payable January 1st, 1902, by Commissioners **Knettles, Clark and Hall,** in aid of the Cayuga Lake Railroad Company, *were issued without authority of law, and without any valid judgment of the County Judge having been made or entered, and fraudulently as against the Town of Lansing; and that the town never received any value or benefit therefor.*

This being true as matter of fact, the plaintiff on proving the above facts, made a case entitling it to recover the relief prayed for in its complaint.

And the burden of proof then fell upon the defendant Lytle, to prove if he could, to the satisfaction of the Court, *that he or some of his grantors, had purchased and owned these bonds and coup..s, bona fide and for value.*

Smith vs. Sac. County, 11 *Wall,* 193.

Stewart v. Lansing 104 *U. S R.* 505.

Brackenridge v. Lansing. Printed Case.

7. The cases settle this proposition — *that where* a municipal corporation, (in cases like this,) "*shows strong circumstances of fraud, or want of authority in the origin or inception of the instrument or instruments; this casts upon any future owner, the burden of proving to the satisfaction of the Court or Jury, that he purchased them 'bona fide,' and for value, before he will be permitted to recover.*"

The case in 11 *Wallace,* 139, *decided in* 1870; was a case founded on $10,000 bonds of Sac county, Iowa. They were made by the County Judge under an enabling

statute, to build a court house. The judge put the county seal in his pocket and emigrated over to Fort Dodge, Webster county, Iowa, and made the bonds *there*, and handed them over to one Messervy, the contractor, and Messervy gave the judge *a* $1,000 *bond back.* It is needless to observe,—that no court house was ever built —and that Smith, the plaintiff, was a foreign transferee of twenty-five of the bonds and sued in the U. S. Circuit Court.

The case was submitted to the Court, and his special findings failed to show that Smith purchased the bonds in *good faith for value. Held* by Miller, J. (all except Clifford concur) that this was fatal to his recovery, and the Court says:

"Treating the bonds and coupons sued on in this case, which are payable *to bearer*, as *negotiable paper*, and conceding to its fullest extent, the protection which commercial usage throws around such paper in the hands of a *bona fide* purchaser for value before maturity, it is nevertheless undoubtedly true that circumstances may be shown in connection with the origin of such paper, which will devolve upon the *holder*, the burden of showing that *he did give value for it, before maturity.* This principle in the text-books of Chitty on Bills, 260, 648; Story on Promissory Notes, Sec. 196; 2 Parsons on Promissory Notes and Bills, 438, and others, is laid down and sustained by numerous citations of authorities by the learned American annotator of Smith's leading cases, p. 753. In one of the latest English cases, Hall vs. Featherstone, Pollock, C. B., says: "if there are any circumstances *in the nature of fraud or illegality,* which can be left to the jury, *proof of these circumstances will cast on*

the plaintiff the onus of showing *that he gave value for the bills.*"

To which Barron Martin added:

"I think there was, at the close of the defendant's case, evidence for the jury in support of the plea." The authorities have established a principle which is contrary to the *general rule*, by which a defendant is bound to prove all the facts necessary to constitute a defense."

And *Bramwell said:*

"The cases have established *that if there be fraud or illegality* in *the inception of a bill*, or in the circumstances under which it was taken by the person who endorsed it to the plaintiff, he must prove *consideration. That is established beyond controversy.*"

The Court then reviews the facts surrounding the making of the bonds, and then says:—

"In the language of Chief Barron Pollock, 'were there not circumstances in the nature of fraud, proof of which cast upon the plaintiff the *onus* of showing that he gave value for the bonds,' they are circumstances from which no Court or Jury could fail to find fraud, in the inception of the bonds on which they sue. And after all this was shown in defence, that such a holder should have a judgment on these bonds without proof that he *purchased them for value*, or that he gave any *consideration for them at all*, is in our judgment pushing the doctrine which gives sanctity to negotiable paper beyond any just principle, or any case decided."

John J. Stewart vs. the Town of Lansing, 104 *U. S.*, 505. *Decided, October*, 1881, **which was an action to recover on the coupons falling**

due July 1, 1872, to July, 1876, inclusive, cut from these very seventy-five $1,000 bonds then claimed to be owned by John J. Stewart and the doctrine is reiterated by the Court, "That the indorsee of negotiable paper, which has a fraudulent or illegal inception, must in order to recover thereon, prove that he is a bona fide holder thereof, for value."

And in that case, it was held *not error to charge the jury to find a verdict for the town.*

WAIT, J., says:

"Here, the actual *illegality of the paper was established.* It was incumbent, therefore, *on the plaintiff*, to show that he occupied the position of a *bona fide holder for value*, before he can recover." *This makes it necessary to inquire whether upon the testimony, the burden of establishing bona fide ownership was so far overcome at the trial, as to make it improper for the Court to take that question from the jury.*"

The Court then reviews the facts set forth in the bill of exceptions which may be abstractly stated, as follows, viz.:

March 21, 1871, the judge of Tompkins county rendered judgment, assuming to act under legal authority, and appointed Knettles, Clark and Hall, commissioners to execute bonds of the town, for $75,000, and invest them in the stock of the Cayuga Lake Railroad Company.

On March 27, 1871, at the instance of opposing taxpayers, a writ of certiorari was issued from the Supreme Court, directed to said County Judge to review this judgment and proceeding.

On September 1, 1871, the County Judge made return thereto, sending up as required by law, a transcript of all the proceedings before him, which were brought under review.

Of this writ, and what was done thereunder, said commissioners and the railroad company had full notice; but the commissioners on the month of *October*, 1871, executed the bonds payable to bearer on the 1st day of January, 1902, with coupons for semi-annual interest attached, and delivered them to the railroad company, in exchange for 750 shares of its capital stock. At the same time the commissioners took from the company a bond of *personal indemnity to save them harmless for said unlawful act*

The bonds were very soon taken by the company to New York, and pledged as collateral security for money borrowed.

May 27, 1872, the Supreme Court reversed the judgment, and held for naught all said proceedings. This judgment still remains in force (63 *Barb. R*, 105).

November 26, 1872, the company arranged with Elliott, Collins & Co., a banking firm in Philadelphia, to take up the bonds in New York; and the company again pledged the bonds to this firm as security for money advanced.

February 8, 1873, Elliott, Collins & Co. was paid, and they parted with the bonds; they being paid $54,337.50 on parting with the bonds.

The negotiations for parting with the bonds was done through Delafield The banking firm never see Stewart at all; but the sale was made and the report made to the railroad company, and the bank received their money February 8, 1873. Somebody paid for them, and we (bank)

got the money (as Delafield testifies). The bonds were produced in court by Stewart's counsel; but *where he got them, or who, or where Stewart was, except that he was a non-resident of this state, and resided in a foreign state, does not appear.*

The bonds had been sold and the money received for them, *but Stewart, through counsel only, produced the bonds; he was not revealed. No one had ever seen him.*

And the Court hold that under these very peculiar and suspicious circumstances, the trial court was justifiable in ordering a verdict for defendant, citing in support of the decision.

Pleasants vs. Fant, 22 *Wall.*, 116.

R. R. Co. vs. Fraloff, 100 *U. S*, 100.

Oscaugon vs. Arms Co., 103 *U. S.*, 261, to which we add

Brackenridge vs. The Town of Lansing.

This case was tried November, 1885, U. S. C. Court, before Wallace, J., and a jury, and the above rule was adhered to, and the facts bearing upon the *bona fides* of the plaintiff's acts most ably applied.

And the facts and suggestions there alluded to are pertinent and directly in point, as the same evidence and facts now appear reproduced in this case.

See certified copy of op. of Wallace, J., filed Mar. 28, 1888.

On denying a motion for a new trial in an action on these same bonds, in Brackenridge vs. The Town of Lansing,

WALLACE, J., held:

That, "the rule is, that when bonds are fraudulently put in circulation, and illegally put in circulation, as they were in this case, after the adjudication of the Supreme Court that they were void—the party who attempts to recover upon these bonds must show affirmatively that he was a purchaser for value."

"The fact that a party has testified to a transaction, *does not require a jury to believe his testimony;* you may say that you are satisfied that while there was a formal purchase, a colorable transaction, and if that is what you find it to be, the defendant is entitled to your verdict."

"I am justified in saying, that it was a most remarkable transaction, if his (Brackenridge's) testimony is correct, a man purchasing for his check of $50,000, a lot of town bonds in a state 2,000 miles away, making no inquiries—acting upon his friend Stillman's statement that he could buy them for $50,000, and it would be a good thing to do so; *do you believe that he purchased them without ever knowing anything about their history?*"

We are aware, that it has been frequently held, by the United States Court, that where one purchased municipal bonds in *Market Overt*, that the *presumption* is, that he acquired them before due, and paid a *valuable consideration for them;* and, that he took them *without notice of any defect* which would render them invalid.

Lexington vs. Butler, 14 *Wall.*, 282.

Montclair vs Ramsdell, 107 *U. S.*, 147.

And where *plaintiff produces* the bonds in court, the execution of them not being denied, it has been held, in some cases, that this is *presumptive evidence* that plaintiff holds them as a purchaser *for value, before maturity,—without notice*

Chambers Co vs. Clews, 21 *Wall*, 317.

But, when it be shown on the defence that such bonds were issued *fraudulently against the municipality*, or *without authority*, as in this case—the *onus then shifts upon the plaintiff*, and he must *show affirmatively that he is a bona fide holder for value and without notice of the fraud or want of authority.*

Stewart vs. Lansing, 104, *U. S.*, 505.

And in no manner can the question of *bona fides* be so conclusively shown, as by the *circumstances surrounding the sale or purchase*

Whether the purchase is *merely colorable;* whether a *mere sham or pretense, a fraud upon the Court or party*

A witness may easily *utter a falsehood; but it is extremely difficult to get circumstances to lie.*

Again, we are aware that, in some cases, it has been held that, "*if any previous holder of the bonds was a bona fide holder for value, the plaintiff can avail himself of such previous holder's position*, without showing that *he himself paid value.*"

Montclair vs Ramsdell, 107 *U. S.*, 147.

But all these cases are in no way applicable to a case like this, *where the bonds were made fraudulently and without authority*

9. Therefore, *when we put in evidence, the records of the proceedings and the reversal of all the proceedings in the County Court, we establish the fact that the commissioners have no authority to make the bonds, and that it was a fraud upon the town for them to make them; and this is clearly decided in the decision above cited; and the burden of proof* was at this point cast upon Mr. Lytle, to show that he or some prior owner of the bonds, through whom he held his title, did, or had owned these bonds *bona fide* and for value, else the town would be entitled to recover.

The only persons shown to have had or claimed any interest in these bonds or coupons were:

1. *The Cayuga Lake Railroad Co.*

2. *Leonard, Sheldon & Foster*, bankers in New York, as collateral security for a loan of $50,000, and also as agents for the railroad company, with power and instructions from the railroad company to sell the bonds for it. (Page 81).

3. *Elliott, Collins & Co*, bankers in Philadelphia, held them as collateral to loan, with instructions to sell and did sell them in February, 1873, (p 81).

This last loan was simply a *transfer* of the Leonard, Sheldon & Foster loan, to this last named firm who paid up the $50,000 loan and took the securities and continued the loan until Feb 8, 1873, *when the latter firm sold the bonds by the direction of the railroad company,* for $54,337.50 and deducted the indebtedness of said railroad company to them, $49,591.67, and credited the balance, $4,745.83, to the railroad company, (p. 81-82).

4. To whom these bonds were sold by this railroad, company is not proven.

5. John J. Stewart.

6. George W. Brackenridge, San Antonio, Texas.

7. John T. Lytle, Medina Co., Texas.

10. The transfer to the Railroad Co., and to their pledgees and agents. The two banking firms, and the said John J. Stewart, will hardly be claimed to constitute *bona fide* sales or ownerships.

The railroad company, being shown to have known all about their defects and its officers and agents being instrumental in procuring the bonds to be executed, fraudulently, as against the town, for the worthless stock of the company.

11. The two banking firms held them as collateral to loans and as agents to the railroad company to sell, for the railroad company and finally did sell them as the property of the railroad company, and paid nothing for them themselves. The qualified interest they held, did not constitute a valid title in them.

12. And John J. Stewart's title was tried before the United States Circuit Court, and reviewed in this court, and he was defeated there. Settling the question of *bona fides* against him.

And the only questions on the "*bona fides*" of ownerships in the chain of titles referred to on the trial, or in the record, remaining are: *Did George W. Brackenridge, or John T. Lytle, purchase and own these securities "bona fide?"*

POINT SECOND.

1. Was George W. Brackenridge a bona fide owner?

The evidence of Brackenridge himself, concerning his purchase of these bonds and the sale of them to Lytle, furnishes an interesting and amusing portion of the defendant's proof in this case, and must be referred to if this court will review it, to determine its truthfulness and honesty. (Page 113).

He relates his business life on pages 117 and 118.

He was born in Indiana, migrated to Texas in 1851, to Seguine 1852, to Texana 1857, to Mexico 1861, to New Orleans 1862, to New York 1862, to Indiana 1862, to Washington 1863, to New Orleans 1863, to Texas 1865, to New York 1863, San Antonio 1866.

His business has been a merchant's clerk, a money dealer, surveyor, a gentleman of business, a lawyer of eight months' practice, a clerk in register's office six weeks, borrowed money, a courier for a bank, in cotton business with Fatman of New York, six weeks bought U.S. Bonds, banker in San Antonio, cattle owner and ranch man, etc., etc., etc. (P. 117–119).

2. His testimony shows that he is *a personal friend of Mr. Lytle*, and has been for twenty years, that Lytle keeps his bank accounts with him, that he is jointly interested with Lytle in various kinds of property and large interests, and that he is an adviser and financial helper of Lytle, that he relates the formal sale of bonds to Lytle substantially as Lytle states it, and that he was to receive for said bonds, one-third interest in Frio ranch, of 40,000

acres. He testifies that he purchased these bonds and coupons of *John J. Stewart*, and paid *John J. Stewart* $50,000 *for them*, by his check, in his office in New Orleans. (See page 116).

He can not tell *when he bought them*, nor the *day* nor *year*. (*P.* 123).

He will not swear, that *he ever paid the check* that he gave John J. Stewart for the bonds. He swears as follows:

Q. How did you pay Mr. Stewart?

Ans. I gave him, I think, a check on the Louisiana National Bank, for the amount. I never gave a check in my life that was not paid It has been paid. (*P.* 129).

Q. Have you that check?

Ans. I have not. I suppose the bank has it. They never surrendered it to me. If I can obtain it, I will annex it to my deposition. (*P.* 116).

The above was taken in New York, *May* 17, 1887. (P. 113).

On the 22*nd of October*, 1888, (*P.* 139), one year and a half after giving his evidence, he brings to the commissioner and attaches to his deposition (Ex. B, p. 139), which is without evidence of identification or oath of identity, a check for $50,000, which he pretends that he gave to *John J. Stewart for these bonds.*

And how false and foreign to the transaction, testified to by Brackenridge seventeen months before, *it appears.* (Page 139.)

It is in Brackenridge's own handwriting, (page 142,) dated February 27, 1882, made payable to the order of *James J. Stewart.*

Is given for *Lansing City bonds*, as marked on margin.

3. It is an order on *the Louisiana National Bank* of New Orleans, to pay $50,000 to the order of *James J. Stewart, and charge the same to the San Antonio National Bank*, and signed by *G. W. Brackenridge, President.*

This check purports to be indorsed by *James J. Stewart for deposit.* It bears the stamp on it that it was paid by the *Louisiana National Bank.* It is produced here by the *bank upon which it was drawn*, and no attempt was made to show that it was *ever paid by the San Antonio bank;* or by Brackenridge, nor was there given any light upon its history. Brackenridge *does not testify that he ever paid it.*

4. There is no evidence that this check was ever seen or heard of by *John J. Stewart.* Nor was there any evidence that *James J. Stewart* ever had anything to do with these bonds.

It cannot be claimed that *James* J. Stewart was the same *person* as *John* J. Stewart, because they have proved that the endorsement of the check is in *James* J. Stewart's handwriting and that the witness knew *James* J. in his life time and that he, *James* J., died in the early part of the year 1888. (Page 143)

Is this any proof that Brackenridge ever paid *John J. Stewart* anything for these bonds? Certainly not. He never paid anything to *John.* And he never purchased any bonds of *James.* And he cannot testify that he ever paid any one.

5. Brackenridge did not know for whom he purchased the bonds.

Brackenridge testifies how he came to, and did, purchase the bonds, and it amounts to this: He had never seen

or heard of these bonds, until 1881—then one Stillman, or some friend of his recommended the bonds to him, by letter, and from the character of the man, he thought they were a good purchase. He says he did not know whether they belonged to Stillman or some one else—or *whether he was trying to serve himself or me.*" All this talk about purchasing, was by letter—letters are lost or destroyed—don't remember the slightest thing that was in the letters—I purchased of J. J. Stewart—never saw him before—*have no impression of what was said*—all I remember is, I understood that he had so many bonds, and I desired to purchase them—I give him $50,000—Stillman told me I could buy them for that, by letter—I gave Stewart, I think, a check on the Louisiana National Bank, for the amount—I never gave a check in my life that was not paid, it was paid. (P. 127–129).

He never knew Stewart before he purchased the bonds, (131); no note or memorandum was made of the sale, (131). He left the bonds in the Louisiana Bank; they lay in that bank three months, and then he took them to New York. *I bought the bonds on his (Stillman's) advice and went to him to know whether I bought them for his account or my own. At the time I bought them, I did not know whether it was for my own account, or whether he wanted some interest in them.* He then told me they were good, but would not say positively whether I should keep them for my own account or not, (pp. 132, 133, 134, 135, 136, 137, 138.)

Clearly the sham contract of purchase was not closed up, before, or at that time. He goes to New York to find out who owned the bonds.

And he testifies, that the reason he did not go directly to the bank where the coupons were made payable, that

he had understood from some one that the town had refused to pay, (133). Stillman then advised him to go to *Shearman & Sterling, attorneys, to find out what was the matter of the bonds, and the legal bearing of the question*, (133) Mr. Hummell had told him what was the matter and the consultation with counsel was "for the purpose" of getting the ownership of the bonds out of the state, so that they might be sued in the federal courts." (134, 136).

Until this time, then, the ownership of the bonds under this sham sale had not been taken out of the state, and even then it was not fixed, because Stillman did not then release his interest. But this defines the whole purpose and intent of this Brackenridge and Stillman, to be a fraudulent attempt to get these bonds in shape to sue in United States Court, this is all clear from the reading of the whole evidence of this witness.

Who then paid that check? Mr. Brackenridge testified that he had not got it, and that he supposed the bank still had it. (This evidence was given on May 17, 1887.)

6. Again, it appears, that at the time he purchased these bonds, all the coupons falling due semi-annually, from July 1, 1876, were purchased by him with them, at least $26,250, of overdue coupons, he got with the bonds—and swears he did not know it. Did not give any more for the lump on that account—would have taken them just as soon without, as with the coupons—never looked at them—was surprised when he found he had got them (129-130). He does not know that he ever saw or bought the coupons—he has no recollection of even the substance of what was said between him and

Stewart, about the bonds, or the purchase of them. He says: "*It made no impression on me at all*," (127).

Thus he purchases over $100,000 in nominal amount, of bonds and coupons, made by a town 2,000 miles away, offered for less than 50 cents on a dollar, with $26,000 of dishonored coupons, with them—never looked at them—made not a word of inquiry about them—did not even know whether they were signed and sealed—did not know whether he bought them for himself, or for Stillman—went to New York three months later to find out—and finally, on Stillman's advice, after Stillman refused to tell him, whether he owned all or part of them or not, three months after he pretends he purchased them, and Hummell has told him the town refused to pay them. He goes about getting the ownership of the bonds out of the State so that they might be sued in the Federal Courts; all these, and ten times more facts, appearing, show to any impartial mind, that this Brackenridge was never an honest—innocent—purchaser of these bonds, for any value whatever; and that $50,000 check was never paid with his money, if it ever existed.

POINT THIRD.

We now come to the question, *did John T. Lytle, the plaintiff*, purchase these bonds and coupons, in May, 1884, of *George W. Brackenridge*, at San Antonio, Texas, *and pay value for them, believing and supposing them to be good, genuine securities, and that no valid defence to them existed, on the behalf of the Town of Lansing?*

1. The defendant, Lytle, attempted to establish the affimative of these propositions, by his own deposition, and that of *George W. Brackenridge*. But the reading

of their depositions, cannot fail to convince any fair mind, the direct reverse of these propositions; and that the pretended deal between said parties, was merely a colorable—fraudulent—and a sham performance, made without any consideration whatever.

Mr. Lytle's own evidence, which was taken in another action, and printed by stipulation, in defendant's record in this action, is this: (Page 93):

"I am 42 years old, reside in Medina county, Western Texas—ever since summer of 1860 have been a stock-raiser—owned cattle ranches. Brackenridge lives at San Antonio, 30 miles from Lytle, and has been my banker ever since 1871, in his large business. They have ever been great friends—and Brackenridge has been his helper and friend, furnishing him funds—and they are jointly interested in large property interests together.

The counsel of Lansing asks him to state the transaction between the witness and Brackenridge. What was said about the bonds, and what was said about the price, and what you paid for them? (Page 94.)

Ans. "Merely that he would buy a third interest in my "Frio property, and pay me in bonds. I would take "bonds in payment. He would pay me $75,000 worth of "bonds. He said the bonds were good. Knowing Mr. "Brackenridge as I did, and the business transactions I "had with him at different times, *I never made any inquiry "about the bonds.*" (94).

Q. "What did you pay him at the time, if anything, "for the bonds? Ans. I gave him a receipt of a third "interest in this property. (95) It was in writing. I "don't know where it is."

This is all that he swears to of any materiality, touching the terms of the contract of purchase of the bonds, on the direct examination. There was no writing (P. 100.)

2. On his cross-examination, after stating that he went to Brackenridge's solely to stay over night, and to make a friendly visit—*knowing nothing at all of these bonds, etc.*,

The witness was asked:

Q. "What did he tell you about the bonds?"

Ans. "He said he had so many bonds—he said he had "$75,000 bonds that he would give me for a third interest "in my ranch—in the Frio ranch; he said the bonds were "good. I told him all right—I would sell him a third in- "terest. He said all right, consider it a trade. That was "all that was said." (Page 99).

> "That was all that took place at that time. The "trade was then consummated. There was no "writing. Ten or fifteen days after, I gave "him a receipt, I drew it myself. It has "been lost. I believe he has it, of course he "has it. It read in substance, 'Received of "George W. Brackenridge, $75,000 in bonds, "in payment for one third interest in the Frio "ranch.'" (Page 100).

He says this last performance took place at Brackenridge's Bank, in San Antonio. The bonds were not produced. The cashier was merely instructed to transfer them to Lytle's credit, subject to my order. They did not make any entry on the books—but he simply told him they were mine. He did not ask him to make any entry or memorandum. That was all. (Page 100).

He then states, in substance, that *he did not see the bonds on that occasion, nor did he know where they were.*

But in two or three hours afterwards, the same day, his cashier in Brackenridge's presence, delivered the bonds to him. For what? *Brackenridge said I had better send my coupons on for collection.* He cut off the coupons. (Page 101).

I then gave them back to the cashier, to put back in the bank to take care of them for me. This was January, 1885. *And this is the last he ever has seen of the bonds. They still remain in Brackenridge's bank, so far as he knows.* (102).

These coupons were sent on by Brackenridge's directions to Sheerman & Sterling, Esqs, Brackenridge's att'ys, who were unknown to Lytle, in business or otherwise.

And he testified when he gave this testimony in New York, in May, 1887, these bonds *still remained in Brackenridge's Bank, in Texas, so far as he pretended to know.* (Page 102.)

When in truth, in fact, these very bonds were in New York, in the hands of the attorney, and no doubts were brought or sent there by Brackenridge himself. (Page 112).

Showing that no sale or transfer of possession of the bonds had ever taken place by Brackenridge to Lytle—and nothing was ever paid by Lytle for the bonds.

3. A very brief review of the evidence of Mr. Lytle, will show that the whole transaction or pretended sale between Brackenridge and Lytle, was a mere sham—colorable and fraudulent affair; his evidence is to this effect: He went to San Antonio solely to make Brackenridge a

Sunday visit, in May, 1884, and *he had never seen or heard of these bonds before.*

The bonds were not then produced—he never saw them.—(99).

Not one word was said about the *price or value of the Frio ranch nor the price of the bonds.*—(99).

Lytle never saw the bonds when he gave the receipt.

Lytle has never exercised any control over the bonds, except to cut the conpons in Brackenridge's presence, and by his directions sent them to his attorney to collect.

He did not know whether the bonds were sealed or not.

He swears, he regarded that he paid fully $50,000 for these bonds.

Nearly six months' interest was due, making $77,625 of good bonds, for $50,000 worth of Texas ranch. Nothing was said why Brackenridge was giving $77,625, in good securities for this $50,000 worth of ranch.

He swears that he did not feel much interest in it.

And nothing was paid for the bonds at the time.

All this, and much more appears, showing that this was not an honest trade, but merely colorable, to enable Brackenridge to collect by a colorable transfer of the bonds into the hands of a third person, which he could not do in his own name.

POINT FOURTH.

The evidence of Lytle and Brackenridge, both clearly prove that Lytle never paid, nor obligated himself to pay one dollar, for these bonds and coupons; it was all merely colorable, as the subsequent transaction shows.

It is said by Lytle that he owned one-half interest in this ranch, and one McDaniels, the other half, as tenants in common; and that it was conveyed to them by Slaughter, Crouch and Thompson, in the spring of 1880 or 1881, and cost $66,000.

Lytle swears, "we transferred one-third interest to Mr. Brackenridge, and made a deed to the San Antonio Ranch Company."

This "San Antonio Ranch Company," was a stock company; a corporation formed on the 28th day of January, 1885.

The conveyance of the one-third interest in the Frio ranch, was never made to Brackenridge, put was made directly to this corporation, after its formation.

It appears that these parties, *Lytle, McDaniels, and Brackenridge, owned equally a stock, or herd of cattle at* this time valued at $180,000, for which each had paid his share. And they capitalized this herd of cattle at the valuation of $180,000, and this Frio ranch at the valuation of $320,000, making $500,000, which was the entire capital of said corporation.

Brackenridge testifies, "we put the Frio land in, that Lytle and McDaniel had owned. I paid no attention to it; it was no kind of consideration to us what we valued it at, for it all went into the company and the cattle went in."

He also testified, showing that each had one-third interest in the $180,000 worth of cattle put into the corporation.

Mr. Brackenridge also swears, that this 40,000 acres, Frio ranch, was never transferred to him, nor to any one

by Lytle and McDaniels, until after the "San Antonio Ranch Company" was formed, and then it was transferred directly by Lytle and McDaniels, to the "San Antonio Ranch Co.," January 28th, 1885.

Now if the theory, or fact, as claimed by Lytle and Brackenridge is correct, they were equal owners of the stock and land, which formed the entire capital of this new corporation. They had each contributed an equal amount, in cattle ($60,000 each,) and if Brackenridge had actually paid for one-third of this 40,000 acres of land, by a transfer of these bonds in May, 1884, he was an equal owner of the land, as well as the cattle—and entitled to one third of the stock of the company.

Now, a little examination of the proof, will reveal the whole secret, of this false and dishonest transaction, and show it to be without any *bona fide* foundation.

Let us see how this stock was divided.

Mr. Lytle testifies:

> "I hold *over one-third* of the stock of this corpo-
> "ration. Brackenridge has one-third of all the
> "stock, less $60,000. He has one-third of
> "$440,000—etc. Why is that $60,000 taken
> "out? (P. 106.)
>
> "Ans. That is in the matter of the purchase of
> "property that belonged to Lytle and McDan-
> "iels before the formation of the company, in
> "which Brackenridge had no interest."

What property did they transfer? Let Mr. Lytle answer

> "We transferred a one-third interest to Mr. Brack-
> "enridge and made a deed to the San Antonio
> "Ranch Company, we never deeded it to him,

"but afterwards formed a stock company or "corporation and transferred the whole of this "ranch to that company." (105).

This ranch is certainly the only property ever transferred to Brackenridge by Lytle and McDaniels, for which he remained indebted to them, and for which he was charged up $60,000, as against his stock.

The above evidence, therefore, must show conclusively, that Lytle never paid one dollar, for these bonds; and that Brackenridge never received one dollar for them; and that he owed for and was charged up for the one third interest in the ranch, on the final division of the stock, (if he ever had it,) being still indebted for said third interest, when the corporation was formed on the 28th of January, 1885.

The pretended receipt produced by defendant, which he claims he gave to Brackenridge for these bonds, is found on page 140. *That was not present when witness gave his testimony in May*, 1887, *before Notary Public Halstead; but is alleged to have been found* 16 *months afterward and is here inserted in the old deposition. (Without one word of proof of its genuineness or identity).*

But, it unfortunately does not sustain the testimony of Lytle & Brackenridge which they had given 16 months before and bears marks of the forgetfulness of the facts *by the draftsman*, when he drew it.

1. It describes the bonds as COUNTY BONDS. Brackenridge's check given to James J. Stewart, calls them "*Lansing City Bonds.*" (141).

2. It recites that the bonds were taken as *part payment* for a one-third interest in *our Frio ranch and stock* located on the Frio river, etc.

The oral evidence is to the effect that these bonds were in full payment of a one-third interest in the 40,000 acres of land or ranch.

3. This purports to evidence a sale of the bonds to *Lytle and Daniels*. But the bonds were never sold to Daniels.

And Judge Wallace holds that, "no conveyance of this property was ever made by Lytle or Lytle and Daniels to Brackenridge, but in the latter part of January, 1885—Lytle, McDaniels and Brackenridge, joined in articles of association as incorporators of the San Antonio Ranch Co., and the ranch was conveyed to the corporation by Lytle and McDaniels. The certificate of incorporation recites that the capital stock, shall be $500,000, divided in 1000 shares of $500 dollars each. (P. 140.)

Subsequently script for 290 shares of the stock of this company "full paid and non-assessible" were issued to Brackenridge, (p. 139, 140.)

This script is all that Brackenridge has to produce or show for the ranch interest for which he claims to have exchanged these bonds. So far as the truth can be ascertained from the rambling, incoherent, and contradictory statement of Brackenridge and Lytle upon cross-examination, it would seem that this 290 shares represents nothing more than the one third interest which Brackenridge held in the firm assets of Lytle & Co., before the date of the pretended exchange of the bonds.

It appears that Brackenridge had been a partner of Lytle and McDaniels, under the firm name of Lytle & Company for a year or two, (or more) prior to the time of the alleged exchange and had put in 60 or $66,000, and the assets of the firm represented an investment of $180,000. The Frio ranch was needed for the purpose of the business of the concern and had been bought by Lytle & McDaniels under the firm name of Lytle & McDaniels, before Brackenridge became a partner. At the time the San Antonio Ranch Company was organized, all the assets of Lytle & Co., consisted of cattle, and this Frio ranch, and for the purposes of capitalization the cattle were estimated at $300,000 and the ranch at $200,000, thus making up the nominal capital of $500,000.

It appears that $60,000 face value of the stock of the corporation has never been issued. Consequently, what was issued to Brackenridge, comprised one-third of the issued capital stock, and is the equivalent of his interest in the assets of Lytle & Company, if the three were equal partners. That they were equal partners, appears from the testimony of Lytle, and that he was entitled to the one-third of the capital stock for his interest. Lytle states also that $60,000 unused stock represents property of Lytle and Daniels, in which Brackenridge held no interest.

It would seem, therefore, that Brackenridge never received anything for the bonds, except stock to the amount of his one-third interest in the firm of Lytle & Co., before the pretended purchase of the Frio property.

No attempt was made on the trial to elicit from either Brackenridge or Lytle any intelligible explicit statement to explain how Brackenridge has received anything for his bonds. This significant omission strengthens the

inference which the testimony faintly suggests, that he never did get anything."

The above statement and opinion of the Honorable Court below who decided this case, is sustained by other mathematical demonstrations founded upon the evidence of Lytle himself. He testifies:

We, Lytle and McDaniels, transferred *one-third interest in this ranch to Brackenridge;* that is, they did not deed to B, but to the corporation. *I hold over one third of the stock.* Who owns the rest? Ans. Brackenridge has one-third of all the stock less $60,000—he has one-third of $440,000. The capital stock is $500,000, less $60,000, which is $440,000.

Why is that $60,000 taken out? Ans. That is in the matter of purchase of property that belonged to Lytle and McDaniels before the formation of the company, in which Brackenridge had no interest.

It is not shown that any other property but this ranch, was property in which B. had no interest. But in consequence of this fact B. is allowed to draw one-third of the stock less $60,000.

If he had bought one-third of that ranch and paid for it with these bonds, why does he not draw one-third of the stock. The answer is plain, it is because he *got nothing for his bonds*, (*p.* 105, 106.)

FIFTH POINT.

Whatever may have been the contract or understanding between Brackenridge and Lytle in May, 1884, it is clearly proven and FOUND BY THE COURT BELOW, that Lytle in the fall of 1884,

learned from his attorney and from Brackenridge and other sources, the defects in those bonds and the contention of the town, and its defences against these bonds; and if he went on and completed the purchase and payment, after notice, and when he had the power to have repudiated the contract, he cannot crave the protection of a bona fide purchaser for value.

Sargeant vs. Eureka Spund Co., 27 *N. Y. W. Dig* 203.

Lytle testifies as follows: "In the latter part of the *summer or fall of* 1884, *I first heard that there was trouble about these bonds*, claimed by the Town of Lansing. I received a letter from my attorneys, (Shearman & Sterling), informing me of some difficulty, (p. 103). *I then talked the matter over with Brackenridge, and corresponded with my attorneys about it.* We, (Brackenridge and I), talked the matter over, "as I have said," at different times. He told me he had a suit pending, about some of the coupons, (103) *I expect he explained it all to me*, (106). Q Tell what you remember. A. I do not remember. (106)."

This conversation alluded to, and which the witness refers to by saying, "as I have said," is the same in which he has sworn that he went to B, after getting the letter from his attorneys in summer of fall, 1884, in which B. told him he had a suit, *i. e.*, one suit pending, and he could not state the conversation nor its effect, (106).

After all *this and in the month of January* 28, 1885, "*we*, (*i. e.*, *Lytle and McDaniels*), transferred one third interest, to Brackenridge, (not to him directly), but we made a deed to the San Antonio Ranch Company, (105). We never deeded anything to him, but afterwards formed

a stock company, and transferred the whole ranch to it, and then followed the issuing of stock, etc."

Nothing had ever been paid over. Brackenridge had received nothing whatever but a mere promise, until after all the alleged defects in these bonds had been communicated to Lytle by his attorneys and Brackenridge; and Lytle must be held to occupy the same position, as if he had heard all this information before he pretended to have bought the bonds, (in May, 1884).

Every fact needful to make Lytle a *bona fide* purchaser must be shown by him If it leaves any such fact unproved, the defense fails.

> "A *bona fide* purchaser is one who buys property of another without notice that some third person has a right to, or interest in such property, and pays a full or fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of such other in the property."

This definition is given by the N. Y. Supreme Court, in Spicer vs. Walters, (65 Barb. 227)

Perry says:

"Mere inadequacy of consideration will not defeat a "purchase for a valuable consideration without notice; "but gross inadequacy of a valuable consideration would "be evidence affecting the good faith of the transaction." Perry on Trusts, Sec. 220

Lytle is not a *bona fide* purchaser, because he had *neither given his deed, or paid the consideration before actual notice.* Perry says: (Perry on Trusts, Sec. 221).

"In order that one may claim protection as a *bona fide* "purchaser, *the money must have been actually paid and the* "*conveyance taken before notice is received of the trust* If "the money is secured but not paid, notice of the trust "will convert the purchaser into a trustee, and so if the "money is paid, but the conveyance is not executed, the "weight of authority is that notice of the trust will "destroy the protection of the purchaser. It is held that "the money must be wholly paid before notice. This "rule proceeds upon the ground that, as the purchaser is "taking the transfer of a title that defeats the equitable "right of a third person, he shall be held to take such "title subject to all equities that attach to it at the time "it passes. If, therefore, he pays no money at the time "the title passes, he has no equity to set up against the "equity of a third person; *if he has notice before he pays* "*the money, he pays in his own wrong.*"

In Paul vs. Fulton, (25 *Mo* 156,) *the head note is as follows:*

"To constitute a person a *bona fide* purchaser for "value, without notice, within the rule that protects such "a purchaser, *the purchase money should be paid before* "*notice is received.*"

And the Court says:

"It is held both in this country and in England, that "*actual payment is in general,* necessary to the character "of a purchaser for a valuable consideration; and that "giving security or executing an obligation for payment "will not be sufficient."

In Wormly vs Wormly, (8 *Wheat.*, 449), *Mr. Justice Story said:*

> "It is a settled rule in equity that a purchaser without notice, to be entitled to protection, must not only be so at the time of the contract or conveyance, *but must be so at the time of the payment of the purchase money.*

The Supreme Court of Indiana, in *Dugan vs. Vattier*, (3 *Blackf.* 245) held, that if a purchaser from a fraudulent grantee had notice of the fraud *before the payment of all the purchase money, he cannot hold the estate as a bona fide purchaser.* In this case the consideration agreed to be paid, was $300; and of this sum, $200 was paid, and the deed executed when the purchaser received notice of the fraudulent title. Held, *that the notice was in time.*

The Court say:

"It is our opinion that the transaction between the fraudulent grantee and the purchaser from him, *must be completely closed, by the payment of all the purchase money, and by the execution of the deed, before the notice, or the purchaser cannot hold the property from the orignal grantor's creditors, whom the original grantor and grantee have attempted to defraud.*"

Patten vs. Moore (32 *N. H.* 382) *holds that:*

"No person can be regarded as a *bona fide* purchaser, until he has paid the consideration of his purchase."

Blanchard vs. Tyler, (12 *Mich. Reps.* 339), holds that:

"To constitute a *bona fide* purchaser, there must be want of notice both at the time of the purchase *and the time of the payment.*"

"Where, therefore, the defendant gave his note, not negotiable, for land upon which plaintiff held a prior unrecorded deed and was fully informed of plaintiff's equities

before making payment of the note, it was held that he could not claim the protection of a *bona fide* purchase."

In Palmer vs. Williams, (24 *Mich.* 328), the Court say: "No one is protected as a *bona fide* purchaser, who has not made payment before notice. It is not enough that he purchase without notice, *if he pays after notice.*"

In Hunter vs. Simrall, (5 *Litt. Ky. Rep's* 62) the Court of Appeals of that state held, that:

"A subsequent purchaser is not protected from the prior equity or want of notice, *where only a part of the purchase money is paid.*"

In this case the Court says:

> "The evidence in the case may not be sufficient to prove notice in fact of the claim of the heirs of Simrall to Brackenridge, etc., before they made the contract with Hunter; but in their last answer they admit notice, and even if they had not done so, the circumstances of but $2,000 out of $6,000 which was to have been given for the land, having been in fact paid, would prevent Brackenridge, etc., in protecting themselves against the equity of the heirs under their purchase to Hunter."

In Tourville vs. Naish (3 *Peere William's Reports* 306), Lord Chancellor Talbot held that,

> "Where a man purchases an estate, pays a part and gives a bond to pay the residue of the money, *notice of an equitable incumbrance before payment of the money, though after the bond, is sufficient.*"

In Jones vs. Stanley (2 *Equity Cases abridged* 85), the High Court of Chancery, in England, held that,

> "If after the execution of the conveyance, but before payment of the consideration money, the purchaser has notice that the vendor has no title to the lands, this is sufficient to avoid the purchase."

In Merritt vs. The Northern R. R. Co., (12 *Barbour* 605), the same Court defined a *bona fide* purchaser as follows:

> "A *bona fide* purchaser is one who purchases for a valuable consideration, paid or parted with, and in the belief that the vendor has a right to sell, and without any *suspicious circumstances to put him upon inquiry*."

In *Jackson vs. Cadwell* (1 *Cowen* 622), the Court says:

> "Enough has not been shown to entitle the defendant to the character of a *bona fide* purchaser for a valuable consideration, without notice. It is not sufficient to show merely a good conveyance in form, the payment of the consideration must be made out. It must be actually paid, for otherwise the purchaser would not be hurt. This doctrine is well settled in the books"

In Freeman vs. Deming, (3 *Sandf., Ch* 327), it is held that the giving of a negotiable promissory note for the price, is not of itself such a payment as will constitute one a *bona fide* purchaser in equity. If however, the notes have been actually negotiated, and paid to the holder for full value, that would be a good payment.

In Swyze vs. Burke, (12 *Peters* 11), the Supreme Court says:

> "It is clear that a purchaser at sheriff's sale cannot protect himself against a prior claim, of which he had no notice, or be held a *bona fide* purchaser unless he shall have paid the money."

In Matson vs. Heirs, etc, (42 *Mich* 478), it was held that,

> "One who claims as a *bona fide* purchaser, but who has only given his notes, must also show that he had made payment thereon before notice of the defect in his grantor's title."

Judge Campbell says:

> "Whether he had notice of the fraudulent character of his mother's title, or was ignorant of it, he did not pay a valuable consideration, but gave his notes. He claims to have paid something on them, but when or how much, does not appear. It was for him to make out payment before notice. (22).

In Murray vs Ballou,—(1 *Johns Ch* 566), it was held that,

> 'A person claiming as *bona fide* purchaser for a valuable consideration, must deny the fact of notice of a trust, and of every circumstance from which such notice might be inferred."

This is the language of Chancellor Kent:

Campbell vs. Roach (45 *Ala.*, 667), holds as follows:

> "The defense of a purchaser for a valuable consideration without notice, is not available, *if the money has not been paid.*"

The rule is settled by a current of authorities so long and so strong, that there cannot be a doubt about it.

The case of Weaver vs. Beavan (49 *N. Y.* 286), cited in Judge Rumsey's opinion, holds that the defendant is not a *bona fide* purchaser, *because the sole consideration was a prior indebtedness.*

It is submitted that no case can be found, which holds that payment of a part of the consideration, makes the purchaser a *bona fide* purchaser. If there be any dictum to that effect, it is not good law.

There are cases where a court of equity has given indemnity to a purchaser, *who had paid part of the purchase money before notice*, but *none where he had conveyed the land after notice.* Such cases are based on a negligence of the party claiming the equity.

Youst vs. Martin, 3 *Serg., and Rawle*, 423.

The above evidence cited, as well as all the evidence given by Lytle and Brackenridge, proves beyond any doubt, that, even were it admitted, that the bonds were sold by Brackenridge to Lytle in May, 1884, to be paid for by the transferring of the one-third of this ranch; yet, it appearing that the transfer or conveyance of the ranch to the San Antonio Ranch Company, did not take place until *after the 28th day of January*, 1885, and the stock of the company, not having been issued until still later, and it appearing that previous to the consummation or fulfillment of the agreement, by the conveyance of the ranch, that *said Lytle had been informed in regard to the difficulties attending these bonds, he is not entitled to the protection of a bona fide purchaser for value.*

POINT SIXTH.

It was claimed by defendant, that the writ of certiorari served upon the county judge alone did not suspend or supersede the authority of the commissioners, or take away their authority to make and deliver the bonds; and that they and the railroad company, not being parties named in the certiorari proceedings, are not bound or affected by the same. This point is not very material in this case, but we submit that the above is not good law.

Each commissioner was a direct party to the proceedings as petitioners, and thereby were parties and had notice, and the evidence shows that they knew all about the proceedings, and the attorneys and counsel for the railroad company and for the petitioners also appeared, and argued the certiorari in Supreme Court, and wrongfully induced the commissioners to make the bonds during the pendency of the proceeding, and the railroad company gave them a bond personally indemnifying the commissioners for their unauthorized act in making the bonds.

The county judge was the only party that this mandate of the court could be directed to, as a party; he alone could obey its command and make returns for review; and for this purpose officially represented are parties interested in and by his official acts.

The people are the party and the office of the relator is simply the agency to institute the proceedings in behalf of the people. All the inhabitants of the political divisions or state, have a common interest and are represented in the proceedings.

The People vs. Supervisors of Westchester, 57 *Barb.*, 377.

The People vs Halsey, 37 *N. Y. R.*, 344.

The Cayuga Lake Railroad Company and its officers and attorney and counsel had full knowledge of the proceedings on certiorari to review the proceedings, decision and judgment of the county judge, to bond this town.

Having, therefore, such knowledge, although not technically made parties to the proceedings for review, they are still affected by it, precisely as if they had been made actual parties.

The law binds all who bought the bonds, with notice of such proceedings, after the proceedings were begun, and while pending, the same as though they had been parties.

Scotland County vs. Hill, 112 *U. S.*, 183.

County of Warren vs. Marcy, 97 *U. S*, 96.

The offer of defendant in the first above case, was to prove by Metz, the agent who delivered the bonds to the railroad company, while a suit was pending, to cancel and set them aside, that he had actual notice of the pendency of the suit. This was rejected by the trial court, and exception was taken. Held error. Chief Justice Waite, at page 185, says:

> "*It never has been doubted that those who buy such securities from litigating parties with actual notice of the suit, do so at their peril, and must abide the result of the same, as the parties from whom they get their title.*"

It follows therefore, that this Cayuga Lake Railroad Co. is in the precise position, as if they had been nominal parties; as they were actual parties to the whole fraudulent and unauthorized transaction in obtaining these bonds.

Are there any parties or holders of these bonds shown in this record, to occupy any better position than the railroad company did? We say not.

The railroad company took the bonds in October, 1871, and at once took them to Leonard, Sheldon & Foster, bankers, of New York city, and loaned of the bank $50,000 upon them.

The railroad company retained the ownership and control of them. These bankers had instructions from the railroad company to sell them, but it seems they did not sell them. And about Nov. 27, 1872, the railroad company borrowed of Elliott, Collins & Co, bankers in Philadelphia, $48,812.50, this being the sum which the railroad company owed Leonard, Sheldon & Foster, New York: and to secure the payment of this last loan, these bonds, by order of the railroad company, were transferred to the Philadelphia firm.

The railroad company made the transfer. The Philadelphia firm had authority to sell the bonds for 70 to 80 cents on a dollar, and did sell them about February 8, 1873, and paid themselves, and credited the balance to the railroad company, so that the railroad company owned these bonds until February 8, 1873.

Who next owned them? John J. Stewart who sued on coupons and was beaten. He did not establish *bona fides.*

Next, Stewart undertakes to sell to Brackenridge, and Brackenridge sues and tries his case and is beaten, on the ground that he never paid anything for the bonds and knew their defects.

Next, Brackenridge pretends to have sold to Lytle in May, 1884, and if Lytle has no better case than his predecessors, he ought to be beaten also.

By the allowance, issuing and serving of the writ of certiorari, and the return thereto, all of which took place before the bonds were made, and all of which were well known to the railroad company—its officers and counsel and the commissioners, all the proceedings before the county judge—his judgment and appointments, and entire record, were removed out of the County Court into the Supreme Court, and there remained suspended, and pending when these bonds were made; and all the powers and authority of the county judge and said commissioners to act, was superseded and annulled; and they had no more authority to act than they would have had before the county judge rendered his judgment.

Besides each of said commissioners were parties as petitioners, and therefore had notice as such parties.

Again it appears by the evidence of Mr. Clark, one of the commissioners, that the treasurer of the railroad company, and Mr. Cox their attorney, and Mr. Knettles and Hall and the railroad company knew all about the certiorari proceedings before the bonds were issued; and the railroad company its officers and counsel by means of false statements to the commissioners—pressing them—and giving them a bond of indemnity, and in fraud of the rights of the town, succeeded in getting these bonds made, (all but

sealing) and getting them into their hands before the question of their legality could be determined by the Supreme Court. They all had full notice of the certiorari proceedings; and therefore knew that no valid judgment had been rendered—that its determination was then pending in the Supreme Court, and that the commissioners had no right to make, or sell, and the railroad company had no right to purchase such bonds, or sell its stock to the town.

These fraudulent bonds were made in the office of Mr. Lyon, the attorney of the petitioners, and by the instigation of Mr. Cox, the counsel for the railroad company and the bond of the railroad company securing the commissioners from harm; and now it is said this railroad company should have been a party in order to be bound by the decision of the court of proceedings which they already knew were void.

That the relator is not a party and that parties are not changed by the proceedings, that the county judge is merely a party through which the mandate of the court operates, to reach the proceedings to bring them out of the inferior tribunal for review, is shown by reference to:

7 *Lansing R*, 467.

6 *Wend. R.*, 564.

23 *Wend. R.*, 277.

7 *Cow. R*, 158.

1 *Hill*, 195.

68 *N. Y. R.*, 587.

4 *Supreme Court*, (*T. & C.*,) 638.

65 *Barb. R.*, 473.

57 *Barb. R.*, 377.

All the power and authority of Knettles, Clark & Hall, as commissioners, to act, was superseded and annulled; the moment this writ of certiorari was served, and certainly after the county judge had returned all the proceedings to the Supreme Court, there was nothing left in the County Court to act upon. The writ and return utterly extinguished all supposed authority conferred by the adjudication and appointment of the inferior court, so that their acts were after that utterly void.

Comyne Dig., Certiorari E.

Bacons Abridge. Title. Certiorari G and K.

The People ex. rel. Clark vs. Commissioners, etc, 22 *Wend.*, 507.

Launitz vs Dixon, 5 *Sandf. S. C*, 249.

1 *Halstead* 161, 13 *Wend.* 664

The effect is the same as a writ of error.

The People vs. Judges, etc., 1 *Wend.* 81, *and cases cited.*

Payer vs Bissell, 3 *Hill*, 239.

And the court could not by any order, prevent such suspension, as the effect of the writ.

Connover vs. Devlin, 24 *Barb. R*, 636.

Connover vs Devlin, 26 *Barb. R.*, 429

It was not necessary nor proper to serve this writ on the commissioners to effect this suspension

Patchin vs. Mayor of Brooklyn 13 *Wend.* 664.

In *Laurits vs. Dixon*, supra, it is held that except in cases when the statute has otherwise provided, the effect of the writ *is to suspend the judgment and its effects in every collateral matter dependent upon it.*

And in *The People ex rel. The Brooklyn School Commissioners vs. Kearney*, 21 *How. Pr. R.* 74. The same doctrine is held, and further that these alleged commissioners were liable for contempt of court, in this acting, pending the writ; and cites many cases holding that the service of the writ on the commissioners was not necessary; and that any notice or information of it is sufficient, same as in case of injunction.

The People vs. Sturtevant, 5 *Seld R.* 263, 277, 278

3 *Edwards Ch* 236-8.

4 *Paige, p* 363.

12 *Modern, pp.* 385, 601, 643, 188, 390.

All these bonds and coupons were utterly void, because when signed and transferred by the pretended commissioners to the R. R. company, there was no *power to sign or issue the same.* Long before this was attempted, the certiorari had been issued and served, and the county judge had, in obedience to the mandate of the court, returned the proceedings to the Supreme Court, and the power of the judge and of the judgment itself was suspended, and removed from that court. And all this was well known to all parties concerned. And that whole transaction was the fraudulent and void acts of the rail road company, its officers, and Knettles, Clark & Hall.

Hence we say, that the subscription for stock was also void and not binding upon the town, nor was the act of these parties in receiving the script of any validity against the town.

The town has never received or authorized the receipt of the script, and is not bound to offer to return it. It has no value more than blank paper.

Neither can they be taunted with the cry or stigma of repudiation.

The town repudiated by successfully procuring a reversal of the whole void proceedings,—openly, and with full knowledge of commissioners and railroad company, who were in conspiracy to fraudulently issue and get these bonds, knowing they were unauthorized and void.

There is no estoppal against the town in this case. These bonds are nothing but the illegitimate offspring of fraud, and crime against this town; the results of an unholy conspiracy between the makers and receivers. And none but non-residents of the state, 2,000 miles away, who can pick them up, without paying anything for them, have attempted the experiment of enforcing their collection. And thus far they have not been very successful, and we hope and pray they never will be.

If we are right in the above proposition, therefore, no power or authority existed in the commissioners or railroad company, to make or take these bonds. That they were void in the hands of the railroad company must be conceded.

But, we contend, further, that these bonds being issued at a time when all the proceedings had been superseded, removed from the County Court, the judgment and appointment being extinguished and rendered inoperative, besides being originally unlawful and void, no power or authority to make them existed, and they have no more validity than any other forged paper. And that the same are void in the hands of a *bona fide* holder, even.

It is clear that these bonds remained in the custody of this railroad company, and were their property, if any-

body's, until long after the pretended judgment had been pronounced void by the judgment of the Supreme Court, which was duly entered on record on the 21st of May, 1872, hence they could not have found their way into the hands of an innocent party, while any judgment apparently authorizing them, existed.

And it has been held that where, at the time of signing negotiable bonds, no authority to sign or deliver them existed, they are void in the hands of even a bona fide holder.

Floyd Acceptances, 6 *Wall*, 666.
Coloma vs Eaves, 13 *Alb L. Jour*, 293.
Marsh vs. Fulton Co., 10 *Wall*, 676
In Loan Association vs. Topska, 20 *Wall*, 655.
St. Joseph Township vs. Rogers, 16 *Wall*, 659.
Gelpecke vs. Dubuque, 1 *Wall*, 175.
Myers vs City of Muscatine, 1 *Wall* 384.
Thompson vs. Lee Co., 3 *Wall*, 327.
Rogers vs Burlington, 3 *Wall*, 655
Supervisors vs. Schenck, 5 *Wall*, 772.
The City vs. Lawson, 9 *Wall*, 478
Commissioners vs. Aspinwall, 21 *How.*, 539.
Bissell vs. Jeffersonville, 24 *How.*, 289.
Harshman vs. Bates Co., 13 *Alb. L. Jour.*, 389.
Sheboygan Co vs. Parker, 3 *Wall*, 93.
Marcy vs Township of etc., 2 *N. Y. W. Dig*, 392.
Atwood vs Mannings, 14 *Eng. Com. L. R.*, 42.
Alexander vs. McKenzie, 60 *Eng. Com. L. R.* 765.
Gould vs Sterling, 23 *N. Y. R.* 464.
Pierce vs. Madison etc., 21 *How U. S R.*, 441.

SEVENTH POINT.

There were about sixteen or seventeen petitions, presented to the County Judge, as the basis for bonding the town of Lansing, but not one of them contained the necessary facts required by law, to give him jurisdiction to entertain the proceedings.

The statute, Chap. 907, Laws of 1869, provides that, "whenever a majority of the tax-payers of any municipal corporation, in this state, *whose names appear upon the last assessment roll of said corporation as owning or representing a majority of the taxable property in the corporate limits of such corporation*, shall make application to the County Judge," etc.

By reference to the petitions, it will be seen that not one of them aver that they are a majority of the tax-payers, or that they represent a majority of the taxable property of said town (P. 46-57).

And for this reason, as well as others referred to in the decision of the Supreme Court, such proceedings were *without jurisdiction, and void.*

Chapter 907, *Sec.* 1, *Laws of* 1869.

The People vs. Van Valkenburgh, 63 *Barb.*, 105.

These petitions are all in the following language, viz:

> "The petitions of the undersigned, ***residents and others, whose names appear upon the tax list and assessment roll of the town of Lansing, in said county, as owning or representing certain taxable property in the corporate limits of said town, respectfully shows.***"

No authority is given under this petition to entertain said proceedings.

I hardly need to cite state authorities, to show that the State Courts hold uniformly that such defects in the petitions, render the entire proceedings null and void, and that the bonds are void even in the hands of *bona fide* holders.

In this case it clearly appears, then:

FIRST. That all the proceedings before the County Judge were without jurisdiction or authority, on his part, to hear or determine the matter, or to render judgment therein.

SECOND. That the railroad company, had full knowledge of the defects in said proceedings during their pendency, and of the certiorari, and that said railroad company and the commissioners conspired together to have the bonds made and executed before the proceeding would be decided.

THIRD. It does not appear that any party has ever held these bonds, as a *bona fide* owner and holder, for a valuable consideration, up to this time.

FOURTH. It does appear that the plaintiff, Lytle, never paid anything for these bonds or coupons.

FIFTH. The evidence also shows, without contradiction, that this defendant, Lytle, had full knowledge of the defects, in these bonds, and all about the defences, which the town made to them, in the fall of 1884, and before he consummated his pretended purchase of the bonds; and long before he transferred the Frio Ranch to the Frio Ranch Co., in pretended payment for these bonds, which

conveyance was not until sometime later than January 28th, 1885.

SIXTH. The facts, clearly show, that the pretended sale of the bonds by Stewart to Brackenridge in 1881, and also the sale from Brackenridge to Lytle in May, 1884, were merely colorable—and done merely for the purpose of getting the same into their hands, for the purpose of bringing suits in the Federal Court

EIGHTH POINT.

It was argued in the Court below, by the eminent Counsel for Mr. Lytle,

FIRST.—That the fact that Lytle had knowledge of the *difficulties or defects* in these bonds after he purchased them, in May, 1884, and *before he transferred* the ranch (after January 28th, 1885), in payment therefor, has no bearing upon the *bona fides* of the transaction, because, it was a *finished, completed sale, and transaction, in May*, 1884.

SECOND.—That the *rule* of equity, in regard to the *sale of real estate*, to which some cases I have cited refer, *is less exacting* when applied to the sale of *negotiable paper.*

1. *But, the counsel are mistaken in asserting that this whole transaction was consummated at the San Antonio Bank, in May*, 1884. *The contract such as it was, was made there; but the transfer of the one-third of the* 40,000 *acres of land in payment, was not made, but remained an executory contract, until after January*, 28*th*, 1885, *and Brackenridge drew no stock of the Frio Ranch Company, until July* 2*d*, 1885, *and that was for his cattle he put in; and April* 26, 1887, *he drew his stock as against the land.*

2. Until that time, B. received *no title, no stock, no pay whatever for these bonds.* Neither did Lytle sell any cattle to Brackenridge. *It was one-third of the land only, and so he distinctly testified.* (P. 110). Therefore, until the actual transfer of the title of this land, and the receiving of the stocks of the company, it is clear that the defendant, Lytle, did not pay, and Brackenridge did not receive anything for these bonds; until then, that branch of the contract was wholly executory, and the mere fact, that by the contract B. had purchased the ranch, *to be conveyed to him at some future time*, does not change the case; nor is there the least evidence, or pretense, to sustain the argument or assertion that B. purchased the *business of the ranch with these bonds.* He purchased *the land only*, and the counsel cannot beg the question, by asserting to the contrary.

3. As to the rule being different, or less stringent, touching sales of *negotiable paper*, I cite a *negotiable paper* case:

Dresser v. Missouri R. R. Const. Co., 93 U. S. R. 92, where Justice Hunt lays down the rule as precisely the same, applicable to "*contracts generally.*" He says:

> "The notes in question were purchased upon an "*unexecuted contract*, upon which $500 only "had been paid, when the notice of fraud and "prohibition to pay was received by the pur- "chaser. The residue of the contract on the "part of the purchaser is unperformed, and "honesty and fair dealing require that he "should not perform it; certainly, that he "should not be permitted, by performing it, "to obtain from the defendant, money which

"they ought not to pay. "*As to what he pays*
"*after notice*, he is not a purchaser in good
"faith. *He then pays with knowledge of a*
"*fraud to which he becomes a consenting party.*
"One who pays with the knowledge of a fraud
"is in no better position than if he had not
"paid at all. He has no greater equity, and
"receives no greater protection. Such is the
"rule in *regard to contracts generally.* In the
"case of the sale of real estate, for a sum pay-
"able in installments, and circumstances occur
"showing the existence of fraud, or that it
"would be inequitable to take the title, the
"purchaser can recover back the sum paid
"before notice of the fraud, but not that paid
"afterwards."

Citing, *Barnard v. Campbell*, 53 N. Y. 73.

Lewis v. Bradford, 10 Watts 82, and other cases.

He then cites the case of *Weaver v. Barden*, 49 N. Y. 291, in which the Court says:

"To entitle the purchaser to the protection of a
"Court of Equity, as against a legal title, or a
"prior equity, *he must not only be a purchaser*
"*without notice, but he must be a purchaser for a*
"*valuable consideration; that is, for value paid.*
"When a man purchases an estate, pays part,
"and gives bonds for the residue, notice of
"an equitable incumbrance before payment of
"the money, though after giving the bond, is
"sufficient."

The above case is rich in precedents, both as to real and personal estate, and *negotiable securities.* And the learned Court levels all distinction between the cases, or subjects of deal, in applying the same high principles of equity and honest deal between man and man, even in cases of the purchase of *negotiable paper.*

I ask the Court to look at the above case, although I entertain no doubt but that this Court is amply posted in the doctrines of this and hundreds of kindred cases.

4. But it is said, Lytle had not learned sufficient of the fraudulent facts, to defeat his recovery; *that he did not learn what the real defense of the towns to these bonds was*, etc.

How much must he know? The Circuit Court said, in the charge to the jury, in *Brackenridge v. Lansing:*

> "If he understood when he purchased them, that "there was a defense claimed to exist against "these bonds, in behalf of the town, if he "understood that the defendant repudiated its "liability upon the ground that it was under "no legal obligation to pay, then he was not "an innocent purchaser. It is not necessary "for you to find that he knew with precision, "all the facts in regard to the origin of these "bonds, and all the facts that it was claimed "by the town invalidated them."

> "If he knew enough about the history of these "bonds, and about the nature of the defence, "which the town claimed to have to them, if "he knew enough to satisfy himself that the "town claimed to have a good defence, then "he was not an innocent purchaser."

Again, it is held, *that where facts, coming to the knowledge of a purchaser sufficient to put him upon inquiry, he will be charged with such knowledge as he might have learned on such inquiry.*

Ind. etc. R. R. Co. v. Sprague 103 U. S. 756.

I will not repeat the facts and references stated, and referred to in my original brief. It is enough to say that the facts clearly appear in the record as I have stated them.

It was the privilege and the duty of Lytle when he did learn the facts, and difficulties attending these bonds, and the difficulties claimed by the town or facts sufficient to put him upon honest inquiry; even after his pretended purchase, to have refused to pay for them or to carry out the agreement by transfer of property in payment.

And *this is just what he did do by taking from Brackenridge's share of stock* $60,000.

5. It seems to me that the evidence of Luria only rendered more doubtful and untruthful the testimony of payment as given by Brackenridge on the trial of his case, in 1885.

He testified then without any contradiction to the *payment* of $50,000 for these bonds; but the improbable story he told then, and repeated on this trial, (for it is still worse in his last deposition), impeaches and discredits his statements, and the Court, nor no one else, who reads his evidence can believe him.

Now what else have they got? It must be remembered that B. has never yet testified that *he paid that check.*

He dodged that. *He never received that check back after it was paid and he certainly should have received it back if he ever did pay it; but if he did not pay it he should not receive it back.*

But it turns out to have been the check of the *San Antonio Bank*, by B. as President and *therefore, it cannot be claimed that B. ever paid it;* and yet that check, made and paid in February, 1882, *by somebody*, had never been heard from, or found, or seen by B. and could not be found until late in the fall of 1888 and after James J. Stewart's death. If the *San Antonio Bank paid it* out of their funds or credits, *it would have had it, and as president of that bank it would have been seen by B. for it lay right under his nose all the time; and we should not have heard the wail of despair we have that they had despaired of all hope of finding it, and yet not one word of evidence is given to explain when, or where, or how it was found.*

Why did they not bring it forward on the formal trial, when Stewart was alive? Answer is very plain. B. nor the San Antonio Bank never paid one dollar on it, else it would have been shown.

We submit that Lauria's deposition does not show any payment by B. or the Antonio Bank either.

(*See page* 142).

6. All that the evidence discloses, if true, is this: Brackenridge in form, drew his check as President of the San Antonio National Bank to the *order of James J. Stewart*, for $50,000 *against the San Antonio National Bank.* This check was deposited by Stewart in the Hibernia Bank in New Orleans, Feb. 27, 1882, endorsed on the back, "*for deposit James J. Stewart.*" It came through the clearing house, and was paid, Feb. 28, 1882, as the

bank stamp, (if proper evidence here) would show, *on Stewart's order.* The account of the San Antonio Bank was good at the time, &c.

Here the history of this check stops, and in an ordinary case, if that was all, it might satisfy the mind, that this check was regularly given and ultimately paid by the drawee. But we lose all history of this check right here. In the regular course of business, if this check was paid by the New Orleans Bank and charged to the San Antonio Bank in February, 1882, it would have been held by the New Orleans Bank as its voucher until the settlement and balancing of the books, with the San Antonio Bank, but what had John J. Stewart to do with this check?

In matter of Brown v Story, 512 *Byles on Bills* 21.

Upon the settlement and balancing of books the check would have gone into the possession of the San Antonio Bank upon which it was drawn and the amount have been charged up to Brackenridge, and the check would be held by this bank as its voucher *until the same should be paid by B; and upon its payment by B it would of course come back into his hands, as his evidence of payment of his debt.*

This Court will not fail to see that Brackenridge *does not testify to the identity of this check, produced and attached to his deposition, without one word of identification or sworn evidence, on the 22nd of October,* 1888, 6 years and 7 months after it was given.

And this is not *Brackenridge's* check drawn against his own funds, *or upon his credit*—nor is it pretended that B. had any funds in the New Orleans Bank to meet

it, *nor that it was paid by him.* It is drawn against the *San Antonio Bank*, and, if the *San Antonio Bank ever paid it, how* easy it would have been to have shown it. But instead of proving this fact, which if true, was so easy of access to defendant, and so necessary to be shown in order to establish the fact that the check was ever paid by the maker, or in possession of the San Antonio Bank, in order to raise the presumption of payment by said bank or B. the case is left entirely barren of any proof whatever, and I therefore do claim, that there is no evidence that Brackenridge, or his bank ever paid this check. B. had sworn distinctly that he did not have it, and the San Antonio Bank did not have it, else he as its president, would or should have known it.

The check was a mere form or part of a sleight of hand performance, in form merely, put in the Hibernian Bank for deposit, and paid by the Louisiana Bank *on Stewart's order* and remained there, or with Stewart until after his death, but never any of Brackenridge's or the San Antonio Bank funds are shown to have paid it.

Again, see the unverified receipt, Ex. E. attached, Nov. 12, 1888, to deposition without one word of identification, which is impeached by Lytle's own evidence. He testified that he gave *his receipt* for these bonds, but this appears to be the receipt of "Lytle and McDaniels." Lytle testified substantially that he *did not sell any stock with the land*—"*only land*," but this paper reads "Ranch and stock."

The fact is shown by B., and Lytle, also, that the cattle or stock were owned and paid for by these persons equally, before the bond sale, and each drew his proportion of the stocks of the company in payment for those

cattle, independently of the land. This unverified paper does not harmonize with the oral testimony, and has been gotten up to supply the defect or necessity made apparent to them, after giving the oral testimony.

Can any one believe that B. or his bank ever paid $50,000 for these bonds, when he tells us, in effect, that he left the bonds where he purchased them, *and did not know whether he bought them himself, or for himself and one Stillman*, who *got him to buy them*, and *when he took them to New York from three to nine months afterwards, to ascertain that fact, and could not even then find out, but did get that good counsel and advice to get the title in some one out of the state for reasons given; and perhaps some that are not given.*

This with the remarkable manner of his pretended purchase, makes it certain to any candid mind that this check was never paid by B. or his bank; because if his improbable story fails to convince the mind that he made an *honest legal purchase*, it must follow that he did not pay the consideration for the purchase.

How easy it would have been, by defendant's counsel, when he was down there alone, having it all his own way with all available means at hand to show, *that this check was paid, and who by, and where it had been* all this time, *who has held it, or where they found it.*

Under the circumstances of this case and its crooked surroundings, no presumption of payment by B. or the bank can arise. And no Court can be deceived by the cunning artifice and ledgerdemain with which their clever trickery has been played.

The Trial Court did not and could not believe the evidence in this respect.

7. I beg leave to add one recent authority which I think bears legitimately upon this case :

That these bonds were made without *any legal authority*, has been directly held by the State Court, and fully sanctioned by *this Court.*

Brackenridge v. Town of Lansing.

Stewart v. Town of Lansing, 104 *U. S. C.* 501.

Purdy v. Town of Lansing.

The last named case was decided by the U. S Supreme Court by a unanimous Court affirming the decision made by Judge Wallace at the Circuit. After reciting the facts, the Court says :

> " In *Mellen v. Lansing*, 20 *Blatch.* 278, 286, *involv-*
> " *ing* substantially the same questions as are
> " here presented ; and in which case it became
> " necessary to interpret the above statute, it
> " was said : ' *Morever, there is an inherent*
> " *defect, in the fact that the company never,*
> " *by any action of its directors, or otherwise,*
> " *designated all counties through which the*
> " *road was to pass. Under the act of* 1871,
> " *the whole extension of branch must be located*
> " *before the bonds of any town can be issued.*
> " It is not enough that a location be made
> " through a particular county. So that even
> " though the maps filed could be regarded as
> " a location of so much of the western extension
> " as was to pass through Tompkins county,
> " *there would be no authority for issuing the*
> " *bonds until the whole extension or branch*

"*should be located.* The board of directors "must, in some way, adopt an entire route as "feasible and favorable *before the town bonds* "*can be issued.*' This seems to have been the "view of the Court of Appeals of New York "in *People v. Morgan*, 55 N. Y. 587. These "views were in accordance with the previous "decision by the same court in *Mellen v. Lan-* "*sing*, 19 *Blatch.* 512, and were reaffirmed in "*Thomas v. Lansing*, 21 *Blatch.* 119.

"We are of opinion that this construction of the "statute is the proper one The reasons there- "for are fully stated in the cases above cited, "and, as they are entirely satisfactory, no good "purpose would be subserved by enlarging "upon them in this opinion.

"As the bonds in suit were issued without any "previous action of the company designating "all the counties through which would pass "the road authorized by the act of 1871 to be "constructed, they must be held to have *been* "*issued without authority of law*, and *can-* "*not, therefore, be the foundation of a judg-* "*ment against the town.*"

In the above case, there was a statute authorizing the bonds, but it required a certain thing to be done by the railroad company, before the town had a right to make them, viz.: to *locate the entire length of its road.* They did locate it part way, but the Court held that was not a sufficient compliance with the law, and that for that reason, the bonds of the town made in aid of the road, *were*

void in any holder's hands, and did not authorize a judgment against the town. So, *in the case at bar.*

FIRST.—This R. R. Company *had no legal existence*, which the State Court held was a jurisdictional defect; and that the town had no *lawful right* to bond in aid of a railroad company that did not exist.

(*See* 63 *Barb R.* 105).

SECOND.—This Cayuga Lake R. R. Company had not located its road, or what was worse did not *state in its articles of association*, "*the name of each county through which the road was intended to be made.*"

(*Id*).

8. THIRD.—The town had failed to comply with the requirements of the law, even had failed to present a legal *petition and in all essential particulars*, stated in the case, (63 *Barb.* 105), and the bonds have been held by a competent Court to have been made *without authority*, and to be null and void.

We, therefore confidently submit, that, in view of the facts shown, to wit:

That there was no legal railroad company in existence which the town had a right to aid by its bonds.

That no legal petition or proceedings to bond was ever before the County Judge.

That there was no location of the road in its charter, as the law required.

That the requisite tax payers never petitioned for bonding the town. And that by reason of the entire lack of legal authority, in the commissioners, to ever make or

issue these fraudulent, unsealed, half made, illegitimate bonds, they are in law and equity wholly void, never having had any legal inception, in whosoever hands they may come, and especially in the hands of the defendant.

And upon this point I will be content to rely, not only upon the above *late decisions*, but upon the opinion written by Wallace J. in the case of "*Irene A. Cowdry v. the Town of Caneadea*," which opinion is as follows: "If the defendant was never authorized to create its bonds, and the commissioners who issued them were not the agents for the defendants for that purpose, the plaintiff cannot recover upon the coupons in suit. Purchasers of municipal bonds executed by agents, must ascertain at their peril that the delegated authority assumed has been conferred.

The commissioners here were appointed by the County Judge of Allegany county in a proceeding in which he was exercising a special statutory jurisdiction, by virtue of Chapter 917 of the Laws of 1869, as amended by Chapter 925 of the Laws of 1871. These acts authorizing municipal corporations to aid in the construction of railroads, delegate to a portion of the tax payers of a municipality the power to create a debt against the consent of other tax-payers, and subject the property of all to taxation for its payment. The special character of the jurisdiction exercised by the County Judge, and the nature of the power invoked by the tax-payers who set the proceeding in motion, both require that the proceeding be strictly pursued. The authority of a majority of the tax-payers of a town to incumber the property of a minority against their will in aid of a railroad or other corporation, receives no countenance from the principles of the common law. Every step therefore, required by the statute, must be in

strict conformity therewith. The *People against Hulbert*, 46 *N. Y.* 110. The rule is also inflexible that when a Court or judicial officer exercises a special statutory power outside the scope of the usual jurisdiction of Courts of general powers, the record of the proceedings must show that the statutory authority has been pursued; and in this regard the proceedings are on the same footing with those of Courts of limited and inferior jurisdiction."

Dunning v. Corwin, 11 Wend. 647.
Thatcher v Powell, 6 Wheat. 119.
Dykman v. The Mayor, 5 Seed, 434.
Betts v. Bagley, 12 Pick 572.
Huntington v. Charlotte, 15 Vt. 46.
Morse v. Presby, 25 N. H. 299.

The applications of these principles to the case in hand is fatal to the validity of the proceedings in question. It is apparent from the record beginning with the petition and ending with the adjudication and appointment of the commissioners by the County Judge, that the proceeding was initiated, conducted, and completed according to the provisions of the original Act of 1869, and in disregard of the essential modifications introduced by the Act of 1871. The Act of 1871 altered the quorum of tax-payers whose consent was indispensable to the creation of the debt As is stated in the opinion of the Court in *People ex rel. Green v. Smith*, 55 *N. Y.* 135, *the object of the amendment was to prevent the creation of a debt for railroad purposes, unless a majority of the tax payers having a substantial pecuniary interest in the question should assent to it.* This record shows that the County Judge was not called on to inquire, and did not assume to adjudicate whether the requisite num-

ber had petitioned for or consented to the creation of the bonds in aid of the railroad. As the law stood when the proceeding was commenced, it was his province to ascertain and decide the question whether a majority of tax-payers of a designated class desired that the town should create and issue its bonds. If he had assumed to decide that such a majority did desire the creation of the debt, then it might be important to inquire whether he acquired jurisdiction of the proceeding upon such a petition as was presented to him. As it is, the petition is mainly important for the purpose of interpretation and construction; as when read in connection with his adjudication, it removes any doubt which possibly might have existed otherwise as to the meaning and scope of the adjudication.

Any person reading the record could not fail to understand that the County Judge had not assumed to decide that there was a majority of consenting tax-payers under the existing statute. If he had recited in his adjudication that a *minority* of tax-payers desired the town to create and issue its bonds, that recital would have been as effectual as those which the adjudication contains when read in connection with the petition. As he did not adjudicate that the requisite quorum of tax-payers had consented to the creation of the debt, his order appointing commissioners to create and issue the bonds was a nullity.

If the bonds had been irregularly issued by the agents of the defendant, within the doctrine declared in several adjudications which are controlling in this Court, the payment of interest upon them for several years would amount to a ratification by the town, although the *interest was raised by taxation. But this doctrine is not*

applied in cases where there is a total want of authority on the part of the town to issue the obligations

Parkersburgh v. Brown, 106 *U. S.* 487.

It is therefore, respectfully submitted to this Honorable Court, that there was no error committed by the court below, on the trial or decision of this case.

That the decree entered to the effect, and as recited therein.

1. That the said bonds were made and executed without *authority of law*, and each and every of them are null and void.

2. That defendant, John T. Lytle, was not a *bona fide* owner or holder of said bonds or coupons; that he has not paid any consideration therefor; and that *before he claims to have paid therefor and before January* 28, 1885, the said Lytle had sufficient knowledge of their defects and unauthorized inception to destroy the alleged *bona fides* of the transaction of his alleged purchase of the same.

3. And that no prior owner or holder of said bonds or coupons has owned or held the same as *bona fide* owners or holders thereof, for a valuable consideration, or in the regular course of business.

And all other portions of said decree are fully sustained by the law and the evidence in the case, and should in all things be affirmed by this court.

H. V. HOWLAND,
Of Counsel for Appellee.

Supplemental Point.

Whatever may have been said in the preceding points, in regard to the firms of LEONARD, SHELDON & FOSTER, or ELLIOTT, COLLINS & CO., holding these bonds as collateral security, etc., must be taken in a qualified sense; because we claim that neither of these firms were ever *bona fide* holders or owners and that neither, *ever sold them*, but, that they were owned, and held, *and sold by the railroad company;* and that the defendant cannot stand upon the *bona fides of the above firms.* The court below, in its opinion and decision is perfectly correct in saying (p. 146):

> "The controversy turns upon the question
> "whether Lytle or either one of the previous
> "holders of the bonds and coupons acquired
> "the title of a *bona fide* purchaser to them.
> "It was held by the *Supreme Court in*
> "*Stewart against the Town*, that as between
> "*the Railroad Company and the Town,*
> "*the bonds were invalid*, and that the judg-
> "ment of the Supreme Court of the state,
> "reversing the judgment or order of the
> "county judge, authorizing the commissioners
> "to execute the bonds, was *equivalent to a*
> "*refusal by the county judge to make the*
> "*original order* (*Stewart vs. Lansing*, 104 *U.*
> "*S*, 505). It was also held in that case that
> "the actual illegality of the bonds was
> "established by the judgment of reversal,
> "and that it was therefore incumbent upon

"the person claiming title to them *to show*
"*that he occupied the position of a bona fide*
"holder before he could prevail against the
"town. Conformably with the rule applied
"in that case the burden of the proof is there-
"fore upon the present defendant, and it is
"only necessary to consider whether the
"evidence in his behalf, meets the require-
"ment of the rule and shows satisfactorily
"that he is or that Stewart or Brackenridge
"was a *bona fide* holder of the bonds and
"coupons. *Elliott, Collins & Company did*
"*not sell the bonds to satisfy their claim as*
"*pledges, but sold them as agents of the rail-*
"*road company;* consequently it is unneces-
"sary to consider whether the defendant can
"rely upon their title as *bona fide* holders
"under the pledge. That title never passed
"to the purchaser, and purchaser only suc-
"ceeded to the rights of the railroad company-
"and the railway company by paying the
"loan did not acquire the rights of the
"pledgees, but merely re-invested itself with
"its original rights in the bonds.

The uncontradicted evidence shows that the above firm of Elliott, Collins & Co. did not sell those bonds.

Mr. Frederick Collins, one of said firm, was asked the following questions:

Q. *Have you ever seen the deposition given in the case of John J. Stewart and the Town of Lansing by him, (Mr. Bell)?* A. *I have, I saw the same last evening.*

Q. *In his deposition taken in that suit, he states that your firm did not sell the bonds. You have no recollection but that his statement is entirely correct, have you?* A. *None whatever.*

Q. Can you statethat the credit, $54,337.50, was not an ordinary deposit by the Cayuga Lake Railroad Company with you to their credit? A. I think not.

Q. Can you state positively that it was not? A. I cannot. (Page 79).

Mr. Delafield, the treasurer of the Railroad Company, testifies as follows:

"*While these bonds were pledged as collateral security,* "*the Railroad Company controlled the sale of them.*"

"*I, verbally authorized Elliott, Collins & Company* "*at the time the loan was made to sell the bonds at from* "70 *to* 80 *cents on a dollar.*" (*And they were sold at about* 74 *cents on a dollar*). (*Page* 85).

These bonds were made Oct. 1, 1871. Mr. Delafield testifies as follows: "*I at once took the bonds to Leonard, Sheldon & Foster*, bankers in New York, and they loaned the company upon these bonds, $50,000. They had power *and instruction from the company to sell these bonds.* (81).

Afterwards and about the 27*th of Nov*, 1872, this loan was changed from New York to Philadelphia, because Elliott, Collins & Co., of Philadelphia, were the company's bankers and desired to control the financial operations of the company. They therefore offered to make the loan, and they advanced the money to the New York house, upon that occasion.

Delafield as treasurer of the railroad company, drew by draft on the Philadelphia firm for $48,812 50 payable to the order of Leonard, Sheldon & Foster, dated *Nov.* 27, 1872. This draft was endorsed and used by the New York firm. This paid up the loan of $50,000 to Leonard, Sheldon & Foster.

And Delafield, treasurer, &c., made a new note to Elliott, Collins & Co., for the loan obtained of them.

And the seventy-five bonds referred to were transmitted directly by Leonard, Sheldon and Foster to Elliott, Collins & Company.

He swears he borrowed $50,000 of Elliott, Collins & Company and paid up the loan of Leonard, Sheldon & Company. (82).

When the bonds were transferred by Leonard, Sheldon & Foster to Elliott, Collins & Co., Nov. 27, 1872, it was done on the *written order of Delafield as treasurer of the railroad company.* The Philadelphia firm took up the New York loan. It was simply a transfer of the original transaction from the New York to the Philadelphia firm, done by the treasurer of the railroad company.

In other words Delafield went to the company's bankers in Philadelphia and borrowed on time notes money to pay up the other loan, and the note or loan was credited to the company by the Philadelphia firm – $50,000; and he then gave to the firm of Leonard, Sheldon and Foster a draft for the amount due them, viz.: ($48,812.50,) (85–85).

The relationship of these banking firms to the railroad company were:

The two notes that were given to Elliott, Collins & Company were produced. (85).

And they appeared to be stock notes—expressing that the Lansing bonds were collateral security.

While the bonds were pledged as collateral security, the railroad company controlled the sale of them. (85).

Again Delafield testifies:

"The pledgees of the bonds were authorized to sell the "bonds at a certain price, and to sell at their own price "if the company did not pay its notes." (85)

Delafield testifies:

"These bonds were transferred from Leonard, Sheldon & Foster to Elliott, Collins & Company by *my written order as treasurer of the railroad company.* It was simply a transfer of the original transaction from Leonard, Sheldon & Foster to Elliott, Collins & Company, *and it was done by me as treasurer of the Cayuga Lake Railroad Company.*" (P. 84).

"At the time of the original loan and at the time of "the transfer of the loan to Elliott, Collins & Company, "they were authorized to *sell the bonds before the* "*maturity of the notes, at* 70 *to* 80 *cents on the dollar*, "and to reimburse themselves out of the proceeds."

They were sold at about 74 cents on a dollar, showing that they were sold not under the default, but as agents under the verbal authority of the railroad's treasurer. (P. 85 82.)

"The notes of Elliott, Collins & Company *contained* "*a power of sale of collaterals on default—and a verbal*

"*authority was given by me to sell at 70 to 80 cents*
"*before default.*

This Leonard of this New York banking firm was a director of this railroad company. (85—and

This Collins of the Philadelphia firm was also a director of this railroad company in 1872 and 3. (85)

The loan to Leonard, Sheldon & Foster, made about Oct., 1871, of $50,000 was all paid up by the railroad company, through Elliott, Collins & Company, out of a new loan of money borrowed by the railroad company of the latter firm, Nov. 27, 1872.

The firm of Leonard, Sheldon & Foster never advanced a dollar on these bonds.

The firm of Elliott, Collins & Company assumed and took the loan off their hands and they were paid their loan and interest (Nov. 27, 1872)

But the evidence simply shows that these bonds were put in the hands of this firm, Leonard, Sheldon & Foster to sell, while the stock notes given to secure the firm of Elliott, Collins & Company speak of them as collaterals, &c., with power to sell. (85.)

The Philadelphia Company sold, if at all, *as agents*, and rendered an account of the sale of the bonds, (Feb. 8, 1873.)—(82.)

75 Lansing Town bonds,.....	$54,337.50
Notes, Mar. 29th, 49 days' int.	
$408.33	49,591 67
Credit Cayuga Lake, &c.,	$4,745.83

It is claimed that these two banking firms were *bona fide* owners and holders, &c., even though they held these bonds as collaterals, &c. This cannot be so.

The banking firms,

1. Held other security (notes) for the loan. They did not loan on those collaterals alone, if at all.

2. Not only did they hold other security primarily for the loan, but the bonds in this case did not fall short of securing the claim.

3. A *bona fide* holder for value is defined:

"One who rightfully receives a paper by transfer before "maturity for valuable consideration, to a purchaser "having no notice of defences that existed between the "original parties or have subsequently arisen. *Sec.* 14, "*vol.* 1, *Randolph on Commercial paper.*"

One who takes bonds as collateral security for a *valid debt for which he holds no other security; and which the bonds fall short of securing*, is a purchaser for value and entitled to all the rights of a *bona fide* purchaser for value.

American File Company vs. Garritt, 110 *U. S.* 288.

Here it appeared that Garritt & Son took the bonds as collateral security for a valid debt for which they had no *other security;* and after applying the bonds *fell far short of securing;* and after applying these bonds, amounting to $81,500 and other securities there still remained $200,000 and over, deficiency to pay the debts due the defendants. The pledgees in that case were held *bona fide* holders for the above reasons.

In this case at bar—railroad company received the bonds in Oct., 1871 and took them at once to Leonard, Sheldon & Foster, New York, and they loaned the company $50,000, Leonard, Sheldon & Foster *had instructions from the company to sell them*, but they did not do so.

They never sold these bonds to the New York firm at all, nor pledged them, but left them with said firm to sell.

(See Delafield ev. page 85)

And the avails or purchase money of the bonds, sold by Elliott, Collins & Company for the railroad company, and by the direction of its treasurer, Delafield, were all credited to the railroad company.

Delafield testifies:

"The credit of Elliott, Collins & Company testified to "by Frederick Collins in his depo-ition, *was a credit of* "*the proceeds of the sale of the bonds of the Cayuga Lake* "*Railroad Company* and was not a deposit of other "separate funds made by the railroad company." (Page 86).

They were sold for the railroad company and by its express direction and the proceeds were all credited to it. The bonds were never sold by any pledgees *as collateral security*, nor by any pledgees under any claim of title by them. Hence as the Court says, they were sold by the *railroad company or its agents;* and the railroad company thus realized sufficient proceeds therefrom to pay up their loan and several thousand dollars over. And neither of these firms ever asserted any title nor attempted

to sell them to satisfy any lien or pledge and the payment of the loan re-invested the railroad company to their title and its proceeds.

The bankers never sold the bonds themselves. Never sold them under their lien or pledge at all, but sold them as agents for the railroad company, hence the purchaser, whoever he was, never succeeded to the title of the pledgees.

H. V. HOWLAND,

Counsel for Appellant, &c.

Town of Lansing.

147 U.S. 79

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CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

JOHN T. LYTLE,
Appellant,
against
THE TOWN OF LANSING.
No. 79.

Appellant's Brief in Reply to Appellee.

THOMAS G. SHEARMAN,
EVERETT P. WHEELER,
Of Counsel for Appellant.

C. G. Burgoyne, Walker and Centre Sts., N. Y.

SUPREME COURT OF THE UNITED STATES.

JOHN T. LYTLE,
Appellant,

AGAINST

THE TOWN OF LANSING,
Respondent.

No. 79.

APPELLANT'S BRIEF IN REPLY TO APPELLEE.

FIRST.

Reply to Supplemental Point.

TITLE OF ELLIOTT, COLLINS & CO.

After having completed his brief, the learned counsel for the Town saw that his own method of stating the facts had compelled him to admit that Elliott, Collins & Co. had paid value for these bonds, to the extent of $48,000, advanced by them in perfect good faith to Leonard, Sheldon & Foster, on the transfer of these bonds from that house. Alarmed at the necessary result of this concession, he has inserted nine extra pages to overcome its effect. But a simple reading of those pages shows that the concession stands, and the refutation fails.

I. Of course, the counsel for the town dwells at great length on the opinion of this Court in the case of

Stewart vs. Lansing, where the evidence was vitally defective; the counsel for Stewart in that case having relied exclusively upon the adjudication in a former suit, which, however, failed him. The necessary evidence has been fully supplied in the case at bar, which shows that Elliott, Collins & Co. actually advanced $48,812.50 to Leonard, Sheldon & Foster, thus taking up the loan which the latter had made to the company upon the faith of these bonds (Record, p. 82); that this transaction was "simply a transfer of the original transaction from Leonard, Sheldon & Foster to Elliott, Collins & Co." (Record, p. 84); that Elliott, Collins & Co. were authorized to sell the bonds, in satisfaction of their loan (p. 85), and *that the bonds never in any way came back to the possession of the railroad company* (p. 81, marg. paging 131). Mr. Collins, the only surviving member of the firm, was unable to state from his own knowledge that the bonds were ever sold; and the only direct evidence of their sale which could be offered was excluded upon the objection of counsel for the town (p. 82). But the railroad company received the proceeds of what its treasurer was informed by Elliott, Collins & Co. was a sale. *It never redeemed the pledge.*

II. Elliott, Collins & Co. were clearly holders in good faith and for value. They never heard anything, before the close of the transaction, at all impugning the validity of the Lansing bonds (pp. 77, 78).

III. Elliott, Collins & Co., being *bona fide* holders, could and did give a perfect title to any one who succeeded them, it makes no difference who he may be, or whether he had any notice of defects in the bonds, or whether he gave a good consideration or an inadequate consideration, or no consideration at all.

Montclair vs. Ramsdell, 107 U. S., 147.
Scotland County vs. Hill, 132 U. S., 107, 116.

IV. The only attempt which is or can be made by counsel for the town to break the force of hi own admissions is by a labored argument to show that the bonds were not sold by Elliott, Collins & Co., but were sold by the railroad company itself. All this argument amounts to nothing whatever. There is not the smallest particle of proof that the railroad company had anything to do with the sale, except by authorizing its pledgees, Elliott, Collins & Co. to make the sale. But, if the fact that the debtor expressly authorizes his pledgee to sell the pledge is going to ruin the title of anyone who purchases the pledge, hard, indeed, is the case of all pledgees, and vain is all the law which has been built up for their protection. The very foundation of all the right which any pledgee has, to sell the pledge for his own protection, rests upon the express or implied agency conferred upon him by the pledgor. The pledgee always sells as an agent of the pledgor, and could not possibly sell unless such an agency existed. Suppose this sale took place *after* the loan became due, would it not be monstrous to argue that the pledgee lost his right to sell or his power to give a good title to the buyer simply *because the borrower a second time authorized the lender to do what he had from the beginning a right to do?* Suppose, on the other hand, that the sale was made *before* the loan became due. Is it not equally monstrous to say that the rule of law, which undoubtedly forbids a pledgee to sell until the loan becomes due, could not be waived by the pledgor, for whose benefit alone such a rule of law exists, and the pledgee be empowered to give to the purchaser just as as good a title then, as he could at a later day? If, indeed, this Court is going to hold that a pledgee cannot give good title, even with the consent of the pledgor, until the loan becomes due, loans upon all securities in the least doubtful must immediately cease;

for many millions of dollars are to-day lent upon securities, which, if the borrowers and lender were both compelled to keep them until the loan becomes due, might sink almost to nothing, under the influence of a panic, before that time. None of these suggestions have any basis in common sense or can possibly be sound law.

V. But perhaps counsel for the town will say that the evidence shows that the Cayuga Railroad Company itself sold these bonds to the persons who took them from Elliott, Collins & Co., and that this will give to those persons a bad title; the railroad company being, of course, chargeable with notice. But this argument has no better basis than the others.

1. *The evidence conclusively shows that the Railroad Company did not sell these bonds and never had anything to do with them after they went into the hands of Elliott, Collins & Co.* Delafield, the treasurer, testifies distinctly: "They did not go through the hands of the railroad company" (p. 82); and again: "The railroad company has never received these bonds back since then" (p. 81). He finally testified that he, as treasurer of the company, "knew nothing whatever personally of the sale of these bonds to anybody" (p. 85). This emphatically disposes of the pretense that the railroad company, or any agent thereof, other than Elliott, Collins & Co., had anything to do with the sale of these bonds.

2. *Even if the railroad company had received these bonds from Elliott, Collins & Co., with authority to sell them, the purchaser would have acquired a perfect title*; because Elliott, Collins & Co., having such a title, could give it to the railroad company or to anybody else, for anything or nothing, and could employ the Company as their agent for sale, if they chose to do so, and still convey a perfect title. It may almost be said to be ancient law, with regard to negotiable paper, that

it may be literally stolen, sold by the thief to a *bona fide* holder, and afterwards sold by the *bona fide* holder, with subsequent notice of the whole transaction, to the thief himself; who will then acquire a perfect title, which he can in turn give to anybody for anything.

Solomons vs. Bank of England, 13 East, 135.
Cromwell vs. Sac County, 96 U. S., 51.
Hascall vs. Whitmore, 19 Maine, 104.
Boyd vs. McCann, 10 Md., 118.
Stamper vs. Hayes, 25 Ga., 546.

VI. Upon the concessions made in the learned counsel's own brief, therefore, it is clear that all the long discussion which has been gone into on both sides as to the good faith of Brackenridge and Lytle is wholly immaterial, because it is beyond dispute that, somehow or other, *they received these bonds from Elliott, Collins & Co., who had a perfect and unquestioned title as holders in good faith and for large value.*

SECOND.

Consideration Received by Appellee.

Appellee states (p. 13) that the evidence is uncontradicted that "the town never received any value or benefit" for the bonds.

On the contrary, the evidence is uncontradicted that the Commissioners took a bond that the proceeds of the bonds should be expended in the construction of the road in the Town of Lansing (pp. 83, 84). This agreement was kept, and the railroad has been running through the Town ever since (pp. 82, 85). This is the greatest benefit which could be conferred by a railroad company upon a town; compared with this, the issue of

stock is of trifling importance. Every resident of the town buys his provisions, fuel and clothing cheaper, and sells his own products dearer for the presence of a railroad. The mere taxes paid by this railroad would undoubtedly pay the interest on these bonds.

THIRD.

Brackenridge Title.

I. Counsel comments on Brackenridge's perservering endeavors to earn a living in various places until he settled in Texas. His history is that of many an American boy who has struggled from poverty up to fortune. And counsel for appellee has not found, in all these places, a person who can impeach his character.

II. Counsel's summary of his argument at page 28 should be tested by a comparison with the cases in which persons have been held to be *bona fide* holders for value.

For example, in Galveston R. R. vs. Cowdrey, the counsel for the railroad company doubtless argued:

"Thus, Cowdrey purchased over $100,000 in nominal amount of bonds and coupons, made by a railroad 2,000 miles away, offered for less than 50 cents on the dollar; never looked at them, made not a word of inquiry about them, never asked whether they were fraudulently issued, or what value the company got for them."

And yet this Court held that Cowdrey could recover on the bonds.

So, in Murray vs. Lardner, 2 Wall., 110, and in the cases cited under the Tenth Point of the principal brief,

these and like considerations were urged by able counsel. But this Court, and the highest courts of England and of the several States, overruled all such arguments, because they tend to impede the negotiability of commercial paper. For a time the English courts (in Gill vs. Cubitt, and like cases) held that suspicious circumstances, tending to put a man on inquiry, were enough to show that he was not a *bona fide* holder. But these have long since been overruled. The course of decisions is clearly stated by Mr. Justice CLIFFORD in Railroad Co. vs. National Bank, 102 U. S., 14, 39.

III. Counsel comments on Brackenridge's delay in producing the check which he gave Stewart. The date given by him, October 28, 1888, is obviously the date it was marked by the notary, and not the date it was put in evidence. For the record shows that the documentary evidence was all put in in the equity suit and the case closed July 25, 1888 (p. 92).

IV. The discrepancy as to the first name of Stewart (whether John or James) is unimportant. The witness was not intimate with him and might easily confound the two names in his memory.

1. There can be no question as to the identity of the man from whom Brackenridge bought the bonds with the man to whom he gave the check. He positively testifies to this on direct and cross (pp. 116, 131). It is to be noted that whenever counsel for the town asked Brackenridge on this subject he spoke of "Stewart" or "Mr. Stewart," and did not use the first name.

2. After the time for taking testimony in the equity suit had expired, Lytle examined Luria, the vice-president of the Louisiana Bank, as to this check (pp. 142, 143). On the motion to allow this deposition to be read the Court received it on condition that the counsel

for the town "shall have an opportunity to cross-examine said Luria, or to take further testimony relating to the subject of said deposition" (p. 144). The counsel "announced in open Court that he did not desire to postpone the hearing for such purpose" (p. 144). This was November 27, 1888 (p. 143, marg. p. 222). Luria's deposition was taken November 8, 1888 (p. 143). The other oral and documentary evidence had been in since July 25, 1888 (p. 92). The counsel thus had four months to enquire as to this discrepancy. And after this opportunity he announces that he does not desire to cross-examine Luria or take further evidence respecting the check or the payment by Brackenridge. This shows that the criticisms he now makes have no support in the facts.

3. Moreover, these criticisms entirely over-reach their object. They have no value whatever, except as a basis for the charge that this check is either an absolute forgery or at least a mere fabrication, got up years after its date. In order to establish this, the Court is asked to believe (1) that Luria, the vice-president of the Louisiana Bank, committed perjury in stating that the check was paid and stamped at the time, (2) that the signature of Stewart was forged after his death, (3) that the stamp of the Louisiana Bank on the face of the check was either forged or put there years after its date by a fraudulent conspiracy between the officers of the Bank and Brackenbridge, and (4) that, after all this fraud and forgery had been resorted to, the forgers did not know enough to insert in the check the correct name of the real Stewart. The obvious truth is that the mistake in Stewart's name is conclusive proof of the good faith and honesty of all the parties to the transaction. Brackenridge has undoubtedly always supposed that Stewart's name was "John," except when drawing this check. Whether Stewart's name was in fact "John," and Brackenridge made the simple mistake of writing "James" when drawing the check, and

then John J. Stewart (as every other business man would do under the same circumstances) endorsed the check in precise conformity to its text, notwithstanding the mistake, or (which is much more probable) if Stewart's real name was James, and it is simply a matter of forgetfulness on the part of Brackenridge subsequently to call him John, the error is in either case transparently simple and affords that most valuable of testimony, *the unconscious evidence which is given to the honesty of a witness, by a mistake made against his own interest.*

V. *The very fact that Brackenridge bought these bonds for $50,000 at the suggestion of Stillman, and under the impression evidently that he was acting for Stillman in the first instance, so far from being any evidence of his bad faith, is the strongest evidence of his good faith.* It fully explains his otherwise apparently extraordinary conduct, in leaving these bonds untouched for so long, and taking so little interest in them. He thought that he was buying them for Stillman. Stillman had never really authorized him to do so; and he found himself, considerably to his annoyance, saddled with these bonds. Of course, when acting for a wealthy man like Stillman, whom he had known for many years, he would have thought it an impertinence to make any inquiries, and when he awoke to the fact that Stillman had never given him any actual authority to buy, but had simply recommended the purchase, and now claimed that it was made on Brackenridge's own account, it was too late for him to make inquiry. The simple fact of his long continued doubt upon the subject is the most conclusive evidence of his good faith.

FOURTH.

Reply to Appellee's Third Point—Argument Against Lytle Purchase.

I. Garbled quotations.

1. At pages 29 and 30, appellees's counsel puts the following in quotation marks as a single question and answer:

"Q. What did you pay him at the time, if anything, for the bonds?

"A. I gave him a receipt of a third interest in this property. *It was in writing.* I don't know where it is." [How should he? He gave it to another man.]

Counsel then continues with the following comment:

"This is all that he swears to, of any materiality, touching the terms of the contract of purchase of the bonds, on the direct examination. *There was no writing.*"

The passage in quotation marks is not at all correctly quoted, as will be seen by reference to the record, page 95. It is an abridgement of three questions and answers; and, if given as an abridgement, would require no comment; but, when given as a literal transcript of the evidence, it produces a false impression, especially when it is followed up by the direct statement that "there was no writing," as though the witness immediately proceeded to contradict himself.

The fact is that the witness uniformly testified that there was a receipt in writing, given at the time of the delivery of the bonds, but that no writing passed at the time of the oral bargain for their sale several days previously. By suppressing these facts, *which appeared distinctly on the precise part of the precise page to which counsel refers*, he contrives to produce an im-

pression of contradiction and inconsistency on the part of the witness, when there was none.

2. A much worse misrepresentation occurs on page 30 of the brief, when quotation marks are again used. The witness is distinctly represented as saying with his own mouth, concerning the written receipt which he gave to Brackenridge: "It has been lost." *He said nothing of the kind.* It was the very same counsel who prepared this brief who put the questions and received answers, as follows:

"Q. What was the paper—a receipt or what?
"A. I gave him a receipt.
"Q. Who drew it?
"A. I drew it myself.
"Q. It has been lost?
"A. I believe he has it—*of course he has it.*"

Thus, by the improper use of quotation marks and the suppression of the distinction between questions and answers, the witness is made to appear as if muddled and utterly uncertain about the history of this paper; whereas he was, in fact, perfectly clear and distinct. *It was the counsel for appellee who suggested that the paper had been lost;* a suggestion which the witness promptly repudiated, by stating what was the fact and could not help being the fact. The paper was given by Lytle to Brackenridge; and, of course, from that moment Brackenridge had it and Lytle never did have it. The suggestion, even in the form of a question, that it had been lost, when addressed to the witness, who necessarily did not and could not have it, was a very improper one; but the transformation of the question by counsel into a pretended answer by the witness is far more improper, and plainly tends to mislead the Court.

II. Criticisms on Lytle's course of dealing:

1. Much is made of the fact that Lytle left the bonds in "Brackenridge's bank" after he had purchased them. But where else should he leave them? Lytle

was a ranchman, living many miles from any town, and having no place in the slightest degree fit for the safe keeping of negotiable securities payable to bearer. He had kept all his deposits for thirteen years with the bank of which Brackenridge was president. He had no other place in which to keep such securities, whether he bought them from Brackenridge or from anybody else. The custody of the bonds was transferred from Brackenridge personally to the bank, as a corporation, through the cashier, as its proper agent. It is well known that national banks act as safe deposit companies, and are, indeed, the only places of safe deposit known in more than nine-tenths of the country. Where is a farmer or ranchman to keep bonds, if he may not deposit them in the bank with which he has done business for many years, without being subjected to such insinuations as are made in this case? It makes no difference that the bonds were bought from the president of the bank. Lytle was not bound to transfer his whole account from this bank to another in San Antonio, if there was any other, which does not appear. He had a perfect right, in law, equity, morals and common sense, to put the bonds in the hands of the cashier, as agent of the bank, and not of its president as an individual, for safe keeping. It was the very best thing, and practically the only thing, which he could do.

2. Again, the point is made that, when Lytle gave his testimony in May, 1887, he did not personally know that the bonds were not in the San Antonio Bank; while in fact the bonds were at that time in the hands of Lytle's own attorneys in this city. Upon this basis, counsel suggests that the bonds "no doubt were brought or sent there by Brackenridge himself" (Brief, p. 31). In order to make this suggestion probable, counsel carefully suppresses the fact, distinctly testified to by Lytle, that he directed the bank, that is, the cashier, to send the bonds to his attorneys, whenever those attorneys should so direct (Record, p. 103).

FIFTH.

Reply to Appellee's Fourth Point.

PAYMENT OF CONSIDERATION BY LYTLE.

I. An eager attempt is made by counsel, on page 35 of the brief, to show that the receipt given by Lytle to Brackenridge, in consideration of the bonds, is in substance a forgery.

1. Counsel lays great stress upon the fact that the receipt was not present when Lytle gave his testimony in May, 1887. That is natural enough; because it was not, and never had been, in possession of the witness Lytle. It was given by him to Brackenridge, and Lytle, of course, had never seen it since. He had no right to see it; and it would have been suspicious if he could have produced it when personally examined. It was obtained from Brackenridge afterwards and inserted in the deposition *by the consent of counsel on both sides* (printed at pp. 92, 93). If there had been no such consent, appellee's counsel would undoubtedly have moved to strike it out or to suppress the deposition; and the motion could not have been resisted. All these exhibits are certified to by the notary before whom they were produced, pursuant to stipulation (pp. 138–141).

2. It is insinuated that this receipt is a forgery, and this is put on the ground of its inconsistency with the actual facts of the case and the testimony of Lytle in describing the bonds as county bonds, instead of town bonds, in stating that they were taken as part payment, instead of in full payment, and in being signed by Lytle and McDaniels, instead of by Lytle alone.

In point of fact, all these little inconsistencies afford conclusive proof of the genuineness of the document. If it had been drawn up afterwards to meet a case, it would have been framed so as to meet that case

exactly. In describing the bonds as county bonds, when they were town bonds, it makes just such a mistake as Lytle would naturally have made in a receipt drawn hastily at the time of the transaction, but would never have made if he had drawn it up after his own direct and cross-examination in the suit. The fact that Lytle signed it for both himself and his partner, while his partner had no interest in the bonds, is obviously explained by the simple fact that the 40,000 acres were owned by Lytle and McDaniels jointly, and therefore that a practical conveyance (such as this was) of a part interest in the land would have no validity if signed by Lytle alone. It was necessary that he should sign his partner's name to the receipt, although his partner got none of the consideration. This again is a plain mark of what passed through the mind of Lytle at the time of the original transaction, while it is to the last degree improbable that he would have thought this matter out at a later time, after he had testified from memory that he signed the receipt in his individual name, and still less probable, in view of the land having actually been conveyed to a corporation, in which Brackenridge had taken stock.

II. A long and labored effort is made to show that Brackenridge received stock for only $60,000 which he had previously invested; and counsel proceeds to argue (Brief, p. 62) that $60,000 were deducted from Brackenridge's share, because he got nothing for his bonds.

Not only does this contradict the plain testimony of the parties, but it is contradicted by the unquestionable fact that Brackenridge got $145,000 in stock, while one-third of the total capital of $500,000 was $166,666; so that the deduction from Brackenridge's supposed one-third of the whole was a little over $21,000, and not $60,000, as counsel is forced to assume, in order to make any basis for his argument.

SIXTH.

Reply to Fifth Point.

NOTICE TO LYTLE BEFORE FULL PAYMENT OF CONSIDERATION.

Counsel's Fifth Point is that—

"Lytle, in the fall of 1884, learned from his attorney, and from Brackenridge and other sources, the defects in those bonds; and if he went on and completed the purchase and payment, after notice, and when he had the power to repudiate the contract, he cannot crave the protection of a *bona fide* purchaser for value."

Brief, p. 39.

This proposition has no foundation, either in law or in fact.

I. As to the law, we believe that every case cited by counsel in his Fifth Point related only to purchases of real estate or non-negotiable securities. The distinction between the rule affecting such matters and the rule governing negotiable paper is well settled, and was distinctly recognized in some of the cases cited by counsel for the town. For example, in Weaver vs. Barden, 49 N. Y., 286, which he cites (on p. 46), the Court expressly said that the contract being for the sale of stock :

"It has not, neither has the certificate or other evidence of title or ownership, any of the qualities of commercial or negotiable paper."

1. In another part of the brief, however, he cites the case of Dresser vs. Missouri Construction Co., 93 U. S., 92, which does extend the rule applied to purchasers of non-negotiable securities to negotiable securities, purchased from the very person who had

obtained them by fraud. But that case can certainly be supported only upon its peculiar facts. It may well be that the person who, by his own fraud, directly obtains the possession of negotiable paper, cannot maintain an action against the person to whom he sells such paper for the purchase price. But this Court has distinctly held that one who takes a municipal bond, with notice that the municipality had no power to issue it, can, nevertheless, compel a person to whom he has sold it to pay the price.

Otis vs. Cullom, 92 U. S., 447.

2. In the case at bar, Brackenridge was no party to any fraud; and, indeed, the question is not one of fraud at all, but of power to issue the bonds in question. Even if he had notice of the want of power on the part of the Commissioners to issue the bonds, the case just cited proves that Brackenridge could have enforced the contract of sale against Lytle; and, therefore, that Lytle only did, without compulsion, that which he would have been compelled by law to do, in fulfilling his contract with Brackenridge.

3. This precise question was settled in the case of Orleans vs. Platt (99 U. S., 683), where the purchaser of the bonds gave notes for the price, and, before they came due, he received notice of the defense to the bonds. It was held that this was no answer to his action upon the bonds; because their invalidity would not have constituted a defense to the notes, even though the person from whom he bought them also had such notice.

II. There are no facts to justify the counsel's statement.

1. He attempts to show that Lytle received the full explanation of the defects in the title to these bonds, at some time in the year 1884, and before the final transfer of the land to the corporation in which Brackenridge took shares, on January 28, 1885.

2. He does this by again suppressing important parts of the testimony, and by putting in quotation marks, without any break, fragments of the testimony, taken from widely separated places (see Brief, p. 39). In this manner he ingeniously creates the impression that in 1884, long before the transfer of the land to the San Antonio Ranch Company, in which Brackenridge was a stockholder, Brackenridge had explained the whole matter to Lytle.

3. The truth, as clearly appears by reference to the record, is that at no time in 1884 did Brackenridge tell Lytle anything more concerning the difficulty in collecting the bonds than that he himself had a suit pending about some of the coupons (pp. 103, 104). After some fifty other questions had been put, on totally different subjects, the Lansing counsel put this question which, it must be borne in mind, was put on May 18, 1887:

"Q. Up to this time [*May*, 1887] have you ascertained or tried to ascertain the particular defense that the Town of Lansing made to these bonds from Mr. Brackenridge? Have you ever tried to ascertain from him?" [The Court will observe the trap laid by putting two different questions in one.]

"A. I have; through correspondence with my attorneys here.

"Q. From Mr. Brackenridge?

"A. We have talked the matter over, as I have said, at different times. I expect he explained it all to me.

"Q. Tell what you remember.

"A. I do not remember.

"Q. You have stated the whole thing?

"A. Yes, sir."

Record, p. 106.

II. It thus appears that the information which Lytle obtained from Brackenridge on this subject was *after the year* 1884; and it does *not* appear at what time it was received, except that it was prior to May, 1887, long before which the whole consideration had been

paid, and the 40,000 acres of land deeded to the Ranch Company, in which Brackenridge held shares. The cross-examining counsel had a right to go further and fix the date of this information; but he evidently did not care to push the matter any further, because the testimony which he had obtained did not suit his purpose.

III. Nor is this all. The only person from whom Lytle received any information whatever, as to the reason why the town refused to pay interest on the bonds, was Brackenridge; and Brackenridge distinctly testified, on page 133: "*I don't know the reason the town refused to pay it.*" How then, could he have told Lytle that which he did not know and had not heard himself? The testimony is perfectly harmonious, and clearly establishes the fact that *Lytle, up to May, 1887, had never been informed by any one what was the real objection to the bonds, and therefore could not possibly have been so informed, when he closed the transaction with Brackenridge*, by conveying the land to the San Antonio Ranch Company, on January 28, 1885. This single circumstance destroys the whole of counsel's labored argument, under the Fifth Point, to the effect that "Lytle in the fall of 1884 learned from his attorney and from Brackenridge and other sources, the defects in those bonds and the contention of the town and its defenses against these bonds" (Brief, pp. 38, 39).

IV. If it be said that he received notice sufficient to put him upon inquiry (although we do not admit that that is at all sufficient to charge him with bad faith), even this objection is cleared away by the fact that he made his inquiries of Brackenridge, and that *Brackenridge never at any time believed that the town had a good defense* (p. 128), *or understood the nature of the defense* (p. 133). In making inquiry of Brackenridge,

Lytle discharged his whole duty, upon any conceivable theory; and, as Brackenridge always believed that the town was honestly liable for the bonds (p. 128), it was not possible for Lytle to learn from that source anything different.

SEVENTH.

Reply to Appellee's Sixth Point.

EFFECT OF THE CERTIORARI.

Counsel for appellee argues (Brief, p. 52) that "all the power and authority of Knettles, Clark and Hall, as Commissioners, to act, was superseded and annulled the moment the writ of *certiorari* was served, and certainly after the County Judge had returned all the proceedings to the Supreme Court." This is not good law, either under Federal or State decisions.

I. In the Town of Orleans vs. Platt, 99 U. S., 676, cited and quoted on pages 17, 18 of the principal brief, a *certiorari* had issued out of the Supreme Court of New York, precisely as in the case at bar. The sale of the securities under which Platt claimed title was made after the service of the writ. This Court held the fact to be immaterial, and affirmed a judgment in favor of the holder.

The same rule was applied in Carroll County vs. Smith, 111 U. S., 556, to a sale of bonds by County Commissioners, made while a suit was pending to enjoin them from issuing the bonds, and while they were actually under injunction not to issue the bonds.

So, in Enfield vs. Jordan, 119 U. S., 680, the Court say (p. 693) :

"The pendency of a suit relating to the validity of negotiable paper not yet due is not constructive notice to subsequent holders thereof before maturity."

To the same effect is Warren County vs. Marcy, 97 U. S., 96.

II. The fallacy which underlies the appellee's argument on this subject is the assumption that the County Judge was a special Commissioner only ; that jurisdiction on his part must be shown, and that the writ of *certiorari* deprived him of jurisdiction. This overlooks the express provision of the statute, quoted at page 9 of the principal brief, viz. :

"And such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State."

In Hoag vs. Greenwich, 133 N. Y., 152, the Court of Appeals has just construed this section. At page 157, the Court say :

"The evident purpose and legitimate effect of this provision is to clothe the judgment with the usual legal presumptions which attend the adjudications of courts of record having general jurisdiction, and to throw the burden of proving a lack of jurisdiction upon those asserting it (Craig vs. Andes, 93 N. Y., 410 ; Brownell vs. Greenwich, 114 *Id.*, 518). No such want of jurisdiction was shown in the present case, and the contrary must be presumed. So that we enter upon our consideration of the case at bar under very different circumstances from those which have dictated the drift of our earlier decisions. In most of them the difficulties encountered were vital, because they struck at the original and primary authority to borrow the money or incur the municipal obligation, while here that authority is fully established and narrows the inquiry to an alleged mistake or error in its execution."

III. In the same case the Court held that, by force of the judgment of the County Judge, the Commissioners became the authorized agents of the town, empowered to borrow upon its credit. It was consequently held that an error in the term of credit stated in the bonds did not invalidate the contract of loan and that the town was liable upon it.

Does it not necessarily follow that the contract in this case made by the Commissioners with the railroad company was valid, and that this Court will enforce it?

In the Stewart case, the attention of this Court was not called to the clause of the statute referred to, nor had the decision of the Court of Appeals, construing it, then been made.

IV. It is well-settled law that a judgment of a court of record, even though irregularly rendered, is valid and determines the rights of the parties until it is reversed.

Gunn vs. Plant, 94 U. S., 664.

The rule in the State of New York is the same. A sale under a judgment, which has been appealed from, is valid, and passes a good title, though the judgment be afterwards reversed.

See cases cited at page 16 of principal brief.

V. On page 55 of the brief counsel cites numerous cases to show that if the bonds are void in their inception they are void in the hands of a *bona fide* holder. These decisions have no application to the case at bar. Here the bonds, as has been shown, were issued by Commissioners who had authority to act for the town. Any irregularity in the proceedings for their appointment, or in the method of their action, does not invalidate the contract made by them. Every argument to show that bonds, issued under these circumstances, are *void*, has been expressly overruled in this Court.

Orleans vs. Platt, 99 U. S., 683.

County of Warren vs. Marcy, 97 U. S., 96.
Sherman County vs. Simons, 109 U. S., 735.
Pana vs. Bowler, 107 U. S., 529.
Lynde vs. The County, 16 Wall., 6.
Lewis vs. Commissioners, 105 U. S., 739.
Hoag vs. Town of Greenwich, 133 N. Y., 152.

EIGHTH.

To sum up the whole case, the opinion of the Court below and the argument of counsel in its support require, if sustained, that this Court should hold :

1. That its own decision in Orleans vs. Platt (99 U. S., 683) was erroneous, since that is on all fours with this case.

2. That the check drawn by the San Antonio Bank on the Louisiana Bank, dated in 1882, and produced by Brackenridge on page 139, and identified by Luria, vice-president of the Louisiana Bank, on pages 142 and 143, was substantially a forgery.

3. That Brackenridge's signature to this check, if genuine at all, was made six years after its date.

4. That the endorsement of Stewart upon this check was forged, it not having been made until after he was dead.

5. That the stamp of the Louisiana Bank on the face of the check purporting to be made in 1882 was either absolutely forged or fraudulently put on in 1888, by officers of that bank, acting in conspiracy with Lytle and Brackenridge.

6. That Mr. Luria, the vice-president of the Louisiana Bank, who is not pretended to have any interest whatever in the event of this suit, or to be connected in any way, even remotely, with Lytle or Brackenridge, has committed perjury for their benefit.

7. That Brackenridge, the president of a national bank, doing a large business, and who is unquestionably a wealthy man of the highest standing in his own community, has committed repeated perjuries.

8. That Lytle, also a wealthy man in a large business, has committed gross perjury.

9. That Brackenridge, Lytle and Luria have all entered into a conspiracy to commit fraud, perjury and forgery.

10. That these three men, all of wealth and standing, have entered into this atrocious conspiracy and committed all these crimes for the benefit of some person unknown; not one of them [so the Court below finds] being the real owner or holder of these bonds or expecting to derive any benefit therefrom, except it be some bribe which it may be surmised the unknown owner has agreed to pay.

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Supreme Court of the United States.

JOHN T. LYTLE,
Appellant,

AGAINST

THE TOWN OF LANSING,
Respondent.

No. 79.

Supplemental Brief for Appellant in Reply to Oral Argument of Respondent.

The respondent's counsel, at the very close of his oral argument, made and strongly urged the point that the bonds in this case were void, even in the hands of a *bona fide* holder. No such point was made upon the argument in Court below; and, although appellant's counsel are now able to see that such a point was hinted at in the respondent's printed brief, they did not understand that it was really intended to be argued, and therefore did not prepare upon this point. Neither did they understand that the appellant's counsel seriously urged this proposition until within the last few minutes of his closing argument, when there was no time left to examine and distinguish the decisions.

In pursuance of leave granted at the oral argument, appellant's counsel now files this supplemental brief upon this single point.

POINTS.

First.

The decisions referred to by counsel for respondent, in which it was held that certain bonds issued by towns in aid of railway companies were absolutely void, even in the hands of *bona fide* holders, are Purdy vs. Lansing, 128 U. S., 557; Mellen vs. Lansing, 20 Blatchford, 278; also 19 Blatchford, 512; Thomas vs. Lansing, 21 Blatchford, 119; People vs. Morgan, 55 N. Y., 587. All these decisions relate to bonds issued by towns in Cayuga County, New York, and all are decided upon the terms of the same statute, to wit, Laws of New York for 1871, Chapter 298, which embodies in itself Laws of 1866, Chapter 398, and Laws of 1867, Chapter 917.

Second.

The statutes, which alone were construed in the cases above cited, all related solely to the New York and Oswego Midland Railroad Company; and all confined the power to issue bonds, in aid of that company, strictly to towns situated in counties through or near which that railroad or its branches might be located. As the Court of Appeals said in People vs. Morgan (55 New York, 587), referring to the Act of 1867: "The counties through which the branches should run were the only ones where towns were empowered to issue bonds. It clearly was the intention of the act that *no town should issue bonds unless the road should run through it or through the county in which the town was situated.*" And again it says, with reference to the Act

of 1871: "*The location of the road or branch is here again made a condition precedent to the right to issue bonds.*" This interpretation of the statutes was approved by Mr. Justice BLATCHFORD, in the three cases decided by him, and was again approved by this Court, on appeal, in 128 U. S., 557.

This construction was undoubtedly correct; and it may indeed be strengthened by reference to the original Statute of 1866, which was referred to and practically embodied in the Statute of 1871, and to which all Midland Railroad bonds were subject. The Statute of 1866 provided that "the powers and authority conferred by this section *shall only be exercised upon the condition* that the consent shall first be obtained in writing of a majority of the taxpayers of *such* town or city;" the words "such town or city" indisputably referring to a town or city situated within one of the specified counties.

Third.

There was not one word in any of these three statutes which gave to the decision of the County Judge any force or effect as a judgment.

Fourth.

The distinction between the statutes upon which the foregoing decisions rested and the statute which governs the case at bar is obvious upon the most cursory reading. The distinction is so broad and so important

that those decisions have no bearing whatever upon the present issue.

I. The first vital and conclusive point of difference is that the statutes relating to the Midland Railroad Company, under which all the foregoing decisions were made, did not contain one word conferring any attributes of a judgment of a court of record upon the decisions of the County Judges. Their decisions under these statutes were to be made entirely *out of court*, and were entitled to no greater presumption of validity than the decision of any ministerial officer, such as an Assessor, a Clerk of Court, or the like. Every fact, necessary to give to these County Judges jurisdiction to appoint Commissioners, and to give to the Commissioners power to issue bonds, was necessary to be proved affirmatively by the party who sought to enforce those bonds.

This precise point was very properly so held by the New York Court of Appeals in People vs. Morgan, 55 N. Y., 587.

II. In the case at bar, all proceedings were founded upon an entirely different statute, referred to and correctly set forth in full upon our original brief. This statute, passed in 1869 and amended in 1870, was a general law, which conferred the power of decision upon County Judges and declared that the decision of the Judge should be rendered *by a judgment to be entered of record*, and that "*such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State.*" The effect of this provision is, and was intended to be, that the decision of the County Judge is to be presumed to have been made upon sufficient jurisdiction, that the burden of proof to the contrary is cast upon the party contesting the correctness of the judgment, and that, until such judgment is

reversed, it suffices to give a perfectly valid title to any one acting under it. This has been expressly decided by the New York Court of Appeals with reference to this very section.

Hoag vs. Greenwich, 133 N. Y., 152.

Fifth.

Another broad distinction between the decision above referred to and the case at bar lies in the fact that the location of the railroad through particular counties was, by the terms of the Midland Railroad Statutes, expressly made a condition precedent to the appointment of Commissioners and the issuing of bonds. But the General Laws of 1869 and 1870, under which bonds were issued in Cayuga Lake Railroad Company, contain no such restrictions.

I. The Statute of 1866 provided this in the most explicit terms, and the Statutes of 1867 and 1871 did nothing except to extend those conditions to fresh towns and counties. It always remained a condition precedent to the issuing of any bonds that the town issuing them should lie in one of the counties through which the railroad was located by a formal act of the Board of Directors. And as the railroad company never did locate this road, either in fact or in form, through the necessary counties, and never took any step from which it could be inferred that it was to be located in accordance with the statutes, there was no more authority for bonding the Town of Lansing in aid of the Midland Railroad than there was for bonding it in aid of the Union Pacific Railroad.

II. The general laws of 1869 and 1870, under which the present case arises, and which were spread fully upon our original brief, contained no restrictions in the least resembling those which applied to bonds issued in aid of the Midland Railroad Company. Authority is given to *any* town, in *any* county, to issue bonds in aid of *any* railroad company within the State of New York. The location of the railroad was not a matter of the slightest importance, and the question of location has never been raised in this case for any other purpose whatever than as an evidence that the railroad company itself was not properly organized according to law. What the Court is now asked by the respondent's counsel to do is to hold that, because it once decided that where a particular location was made a condition precedent to the issue of any bonds, the failure to make a distinct and unmistakable location avoided the bonds, therefore, the failure to make such a location, although *not* required by any statute as a condition precedent, also avoided the bonds. Or, if this is not what counsel means to argue, his proposition must be (if these cases were to have any bearing whatever upon the present) that, because it has been held that the precise location of a railroad was a condition precedent, where the statute *did* declare it to be so, the similar location of a railroad must also be a condition precedent, under a statute which *did not* declare it to be so and did not say a word about "location."

Sixth.

The decisions above referred to, and cited by appellant's counsel as adverse, have, therefore, no bearing whatever upon the case at bar, which arose under a

different statute, imposing no conditions and conferring upon the County Judge judicial powers which were withheld from him in the other cases.

Seventh.

Respondent's counsel further argued that the reversal of the judgment of the County Court deprived the bonds of all validity. The complete answer to this, however, is that the bonds were actually issued before the judgment was reversed; although they did not pass into the hands of the present holder until after the reversal. This case is in this respect, as in many others, precisely like that of Orleans vs. Platt, 99 U. S., 676, where it distinctly appeared (p. 680) that the bonds were issued to the railroad company on April 4, 1872, that the judgment of the County Court authorizing the issue of the bonds was reversed in February, 1873; that the bonds remained in possession of the railroad company for three months afterwards, and were not pledged to any one until May 31, 1873, and were sold by the pledgee to the plaintiff in February, 1874, one year after the reversal. Nevertheless, this Court sustained the validity of the bonds in the hands of a *bona fide* holder for value.

Eighth.

The litigation over these bonds has now lasted for twenty years, and has gone on side by side with the litigation concerning the bonds issued by the same town in aid of the Midland Railroad Company. The

same counsel appeared for the town in all these litigations; and the late Senator Francis Kernan, well known as one of the ablest lawyers of his time, argued most of these cases for the town, both in this Court and in the Court below. While he was constantly urging in all the Federal Courts that the bonds issued in aid of the Midland Railroad Company were void in the hands of a *bona fide* holder, and succeeded upon that issue, he never once raised the same point with respect to the bonds issued in aid of the Cayuga Lake Railroad Company, and actually allowed one judgment to go against the town, upon coupons taken from these bonds, and to remain unreversed. It cannot be supposed that, if there had been the slightest plausibility in this claim, Senator Kernan would have failed to present it at every stage of the litigation.

Ninth.

We may be permitted to say that the raising of this entirely unfounded objection, as an afterthought, at the end of twenty years of litigation, is of itself an ample justification of the large discount at which these and similar bonds have always been sold. All over the United States, it is a matter of universal record that towns and counties have first recklessly pledged their credit, in order to get railroads to run through their borders, and have then immediately turned around and resorted to every possible expedient and set up every conceivable technicality, in order to avoid payment of the bonds which they were so eager to issue. No business man of common sense would ever dream of purchasing a town bond, issued in aid of railroads, no matter how regular, just and valid, except at a discount

sufficient to enable him to employ the very best counsel, and to pay the costs of litigation, running from the lowest to the highest Courts, and extending over many years. It would be a new doctrine, indeed, if the fact that an individual was notoriously litigious, and always refused to pay his just debts, until after he had exhausted every resource known to the law or in physical resistance to the Sheriff, should make it impossible for any one to become a *bona fide* holder of his promissory notes, at a discount sufficient to warrant the expense, risk and labor of such litigation. And the rule of law which would not allow an individual to plead: "The plaintiff cannot be a holder in good faith, because he knew that I never paid a debt in my life, until after the Court of last resort had sent me to jail, to enforce payment," is equally applicable to municipalities.

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